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AUTHOR Pares, Maria; And Others
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ABSTRACT

Utilizing official records and reports, the Arizona Advisory Committee to the U.S. Commission on Civil Rights conducted an investigation of the criminal justice process afforded American Indians in Flagstaff, Arizona. The investigation focused on Indian treatment from arrest through sentencing and 2 days of informal hearings held in both Tucson and Flagstaff during the fall of 1975. Specifically, the investigation centered on: the initial encounter with law enforcement officials; arrest information (about 40% of all people arrested in Flagstaff in 1974 were Indian--65% of those arrested for alcoholic related offenses); appearance in court; advisement of rights; right to counsel; right to bail or release on one's own recognizance; right to trial by jury; the guilty plea; and Flagstaff's Local Alcohol Reception Center (LARC). Findings indicated: unnecessary arrests in violation of the law had been made of persons who were intoxicated; the State and Flagstaff had failed to provide adequate funding for local alcohol centers; of those persons arrested for minor traffic offenses, illegal bond had been required of American Indians only; nonlawyer magistrates had failed to fully advise defendants of their constitutional rights; a fulltime court interpreter was needed for monolingual Indian defendants; a state-wide public defender system was needed to assure proper defense; and provisions needed to be made to insure that American Indians served on jury panels. The Committee developed 12 recommendations addressing the legal and operational specifics of its findings. (JC)

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A report to the Arizona Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the findings and recommendations of this report should not be attributed to the Commission but only to the Arizona Advisory Committee.

2 March 1977

RC010205

JUSTICE IN FLAGSTAFF:

ARE THESE RIGHTS INALIENABLE?

A report prepared by the
Arizona Advisory Committee to the
U. S. Commission on Civil Rights

ATTRIBUTION:

The findings and recommendations contained in this report are those of the Arizona Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission.

This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

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LETTER OF TRANSMITTAL

ARIZONA ADVISORY COMMITTEE TO THE
U.S. COMMISSION ON CIVIL RIGHTS
March 1977

MEMBERS OF THE COMMISSION

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John A. Buggs, Staff Director

Dear People:

The Arizona Advisory Committee, pursuant to its responsibility to advise the Commission concerning civil rights issues in this State, submits this report on problems encountered in the criminal justice process by American Indians in Flagstaff. The Committee investigated the treatment that Indians receive from arrest through sentencing in several towns bordering on or near Arizona's 20 Indian reservations. The Advisory Committee considered this the issue of utmost importance since Indians comprise approximately 10 percent of the State's population and numerous allegations have been made that American Indians have been denied equal protection of the laws. After conducting its investigation , the Advisory Committee held 2 days of informal hearings in Flagstaff on November 8-9, 1975, and in Tucson on November 11-12, 1975. The Advisory Committee focused its report on Flagstaff because we found that this city best illustrated the problems that confront American Indians from arrest through sentencing.

The Arizona Advisory Committee found that the administration of criminal justice in Flagstaff is not always equal for all persons regardless of race. Although part of the problem derives from cultural conflict, the Committee found deficiencies which could be rectified with a minimum of effort by the State of Arizona, and the City of Flagstaff. Specifically, the Arizona Advisory Committee found that unnecessary arrests in violation of the law are made of persons who are simply intoxicated; that the State of Arizona and the City of Flagstaff have failed to ensure the funding of local alcoholism reception centers; that of those persons arrested for minor traffic offenses Flagstaff

illegally requires bond only from American Indians; that nonlawyer magistrates fail to advise defendants fully of their constitutional rights in criminal proceedings; that a fulltime court interpreter is needed for those Indians who do not speak English; that Arizona needs to create a Statewide public defender system and that courts should ensure that American Indians are not excluded from jury panels.

Since the Advisory Committee found that the great majority of American Indian encounters with the criminal justice process in border towns involve alcohol, we request that the Commission forward this report to the National Institute on Alcohol Abuse and Alcoholism (NIAAA) of the U. S. Department of Health, Education, and Welfare. The Advisory Committee urges you to request that NIAAA appropriate monies to the State of Arizona to assist with funding local alcoholism reception centers for the treatment of public inebriates. Such funding would ensure law enforcement compliance with recent State legislation preventing arrests for public intoxication. In addition, the Advisory Committee asks that the Commission write the Governor of Arizona and the Chairmen of the Hopi and Navajo Nations requesting that they review the report.

Respectfully,

/s/

Dr. Morrison Warren
Chairperson
Arizona Advisory Committee

ACKNOWLEDGMENTS

The Arizona Advisory Committee wishes to thank the staff of the Commission's Mountain States Regional Office, Denver, Colorado, for its help in the preparation of this report.

The investigation and report were the staff assignment of Maria Pares, William Levis, and Becky Marrujo, with support from Esther Johnson and Phyllis Santangelo. The project was undertaken under the overall supervision of Dr. Shirley Hill Witt, director, Mountain States Regional Office.

Final production of the report was the responsibility of Deborah Harrison, Rita Higgins, and Audree B. Holton, supervised by Bobby Wortman, in the Commission's Publications Support Center, Office of Management.

Preparation of all State Advisory Committee reports is supervised by Isaiah T. Creswell, Jr., Assistant Staff Director for Field Operations, Washington, D.C.

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An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

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PREFACE

The following account of the shooting of Vernon Wesley and his subsequent death is based on the results of investigations and interviews. On November 20, 1975, the Arizona Advisory Committee to the U.S. Commission on Civil Rights heard Philip Shea, an attorney, say, "[S]omebody had to be killed. It was just as certain that someone had to be killed in one of those bars as it is that someone is going to be killed in a Greek tragedy. It is absolutely inevitable."[1]

The bars he referred to are located just east of the San Carlos Apache Reservation between Safford and Bylas, Arizona. Separated by an open field, the two bars are about 1 mile away from each other on U.S. Highway 70. Prior to the shooting, many residents living near the bars complained to local law enforcement officials and the Arizona Department of Liquor Licenses and Control about violent incidents, nude female dancers, liquor sales to people already intoxicated and to minors, and the general operation of the two bars. Their complaints were not acknowledged because they were not verified complaints as required by State law. Also, the department failed to notify complainants that their complaints must be verified or signed in front of a notary public before any action could be taken.

At the committee's hearing, no one doubted the validity of the words spoken by Shea. A young Apache man, Vernon Wesley, 18 years old, was the grandson of a nationally known and respected former tribal chairman, Clarence Wesley. Donald Eugene Mayfield, a non-Indian, had owned and operated the Geronimo and Roadside Bars since 1973 with his brother, Thomas J. Mayfield. Vernon Wesley was shot by Donald Mayfield in the Roadside Bar on Saturday, March 16, 1974, and died a short time later early Sunday morning.

After the shooting, Mayfield reported his version of the tragic event to the authorities. His narrative was contradicted by the Indians present at the time of the shooting. Despite the contradictions, some facts are certain. Both versions indicate a fight had taken place earlier between two groups of Apaches at the Geronimo Bar. Mayfield brandished his .308 rifle to quiet the disturbance and cleared the bar by shooting into the back wall. He then went to the Roadside Bar with his .308 rifle, entered through the back door, and ordered that bar cleared. There was no disturbance in process when he stepped into the bar; all was quiet. Without apparent provocation, he fired shots

p. VIII blank

into the south wall of the bar. That Saturday night in Baylas ended with the shooting and killing of Vernon Wesley, the wounding of Thomas Mayfield, the Roadside Bar looted and wrecked, and chaos. These facts are not disputed by anyone.

American Indians present at the Roadside Bar that night attest that their version of the event is true. They said Mayfield was standing behind the bar when he shot young Wesley. Mayfield swears the rifle went off (at close range) while Wesley struggled for possession of it. (p. 666.) But neither version can be supported conclusively because of the lack of evidence.

One official of the Arizona Department of Public Safety (DPS) is convinced that evidence obtained from examination of powder burns and the size of the wound on the body and clothes of the victim could have proven whether the shooting was involuntary manslaughter or first degree murder; Mayfield claimed involuntary manslaughter.

Another official who was part of the investigative team for DPS said the mortician in Safford, Roger David, was told by DPS officials and the sheriff's officers on two, and perhaps three, occasions not to alter in any way the body or the clothes of the victim because they constituted evidence in the case. The powder burns, however, were completely washed off the arm and the clothes were incinerated. (p. 667.) When investigators from DPS arrived at the mortuary, the clothes--a shirt and undershirt--were reported to be at the city dump. Investigators were never able to retrieve them. The mortician claims the disposal of the clothing was an accidental oversight. (p. 685.)

This particular incident was not Mayfield's first contact with law enforcement officials. On November 1, 1973, he was charged with and investigated for aggravated battery against Steven Graig, another Indian. Graig was admitted to the Safford Inn Hospital for skull and chest X-rays and for observation. The original charge against Mayfield was reduced to simple battery and he was fined $110 by Justice of the Peace Lyman Holyoak.

Two days later in another incident, Irving Bush was shot in the legs with birdshot from a .22 caliber pistol fired by Mayfield. Donald Mayfield readily admitted to the shooting, saying he did it because Bush was hurling beer bottles at him without cause.

These occurences are only two of several which were investigated. Yet violent acts appear to have happened

often at the two bars. In fact, the Mayfields' operation of the Geronimo Bar led one officer to observe:

> [A]t times a bar owner in a remote area...such as...the Geronimo Bar may have to resort to physical action to eject unruly customers. But Mr. Mayfield has sent at least four persons to the hospital in the past two months. This seems a bit unnecessary.

In January 1975 Donald Eugene Mayfield received a sentence of 7 years probation for involuntary manslaughter for the shooting death of Vernon Wesley. After the sentencing Clarence Wesley denounced the double standard of the "white man's law." His attorney, Phillip Shea, remarked, "It's racist. The State doesn't care what happens to the Indian, yet it's quick to close down a bar in Phoenix if a girl goes topless."

Note to the Preface

1. The information for the preface was gathered from the following sources: transcript of the Arizona Advisory Committee hearing held in Tucson on Nov. 20-21, 1975, as recorded by a court reporter (shown as page numbers in parentheses); investigative reports on the incident by the Arizona Department of Public Safety, given to the Arizona Advisory Committee at the hearing, Nov. 20, 1975, by Philip Shea, an attorney representing Clarence Wesley; and an article from the Arizona Republic, "Indian Attacks Son's Killer in Courtroom," Jan. 11, 1975.

I. INTRODUCTION

The first study of problems related to the civil rights of American Indians in the Southwest undertaken by the U.S. Commission on Civil Rights was in 1972, during public hearings held in Phoenix, Arizona, and Albuquerque, New Mexico. The issues raised at the hearings and the Commission's observations were released in a May 1973 report entitled The Southwest Indian Report. The Phoenix and Albuquerque hearings revealed the need for more investigations, and as a result, the Commission conducted a study of educational and employment opportunities, medical care, and health facilities on the Navajo Reservation in 1973. A report of the Commission's investigation was released in September 1975, The Navajo Nation: An American Colony.

The Arizona and New Mexico Advisory Committees to the Commission in the fall of 1975 voted to study the civil rights of American Indians in those two States. The New Mexico Advisory Committee has since released two reports, Indian Employment in New Mexico State Government and The Farmington Report: A Conflict of Cultures.

In February 1975, the Arizona Advisory Committee voted to conduct a study of the administration of justice as it affected American Indians in areas bordering on reservations. The Advisory Committee had recently released two studies; Indian Employment in Arizona and Adult Corrections in Arizona, and it seemed to be the proper time to investigate the criminal justice system in the State. According to Arizona Advisory Committee member Peterson Zah "[W]e have found that the administration of justice in the areas near the reservation continues to be an issue of grave and widespread concern among the American Indians in the State." (p. 9.)[1]

The Advisory Committee limited its investigation to police action and courts under the jurisdiction of the State because oral complaints received by the Committee focused on the State's criminal justice system. Also, the Arizona court system has the greatest impact on Indians in the State. Many Indians have had some contact with the State criminal justice system at one time or other. While the 20 reservations in Arizona have distinct justice codes which apply to Indians and to non-Indians in varying degrees, the State system applies to all persons within the

jurisdictional borders of Arizona. (excluding the reservation)

The Advisory Committee, with the assistance of the Commission's Mountain States Regional Office (MSRO) staff, attempted to investigate as many geographical areas within the State as possible. They hoped to obtain a comprehensive view of how the criminal justice system affects American Indians from the initial encounter with police officers through the final disposition in court. Advisory Committee members and MSRO staff members spent the spring, summer, and fall interviewing persons in Phoenix, Tucson, Globe, Yuma, Window Rock, St. Johns, Holbrook, Tuba City, Page, Oraibi, and Flagstaff and other sites on and off the reservations. Persons interviewed included judges; county, city, and defense attorneys; police and tribal officials; defendants; amd interested persons.

After reviewing the collected information, the Advisory Committee invited individuals to testify at informal hearings held in Flagstaff and Tucson in November 1975. According to Dr. Morrison Warren, chairperson, the Arizona Advisory Committee heard "testimony regarding the jury selection process, arraignments, arrests, bail bond procedures, the legal rights of American Indian defendants, local jail conditions, and jurisdictional problems." (p. 5.) Other material on the subject was admitted into the official record. A court reporter transcribed the proceedings of both hearings.

Although the Advisory Committee sought to investigate the treatment Indians receive throughout Arizona, it soon became apparent that it was an impossible task to examine thoroughly problems over such a large geographic area. With the cooperation of local officials, however, the Advisory Committee obtained a comprehensive view of how the criminal justice system affects Indians in Flaggstaff, the county seat of Coconino County.

Flagstaff, with a population of 25,554, is the largest city in northern Arizona and is located in an area with the highest concentration of Indians in the State. In 1970, 1,324 of Flagstaff's residents were Indians. Most of these are Navajo, a tribal group which constitutes the majority of Indians in Arizona.[2] According to the 1976 Tribal Directory of the Arizona Commission of Indian Affairs, of the 195,958 reservation Indians in the State, 145,403 are Navajo.[3] The

boundaries of the Navajo Reservation are 30 miles from Flagstaff. The Hopi Reservation (population 6,865) is within 60 miles of the Coconino County seat. The county has 18,562 square miles and is the second largest county in the United States. To most people, Flagstaff means travel and tourism. The city, over 7,000 feet above sea level, sits at the base of the San Francisco Mountains, the tallest peaks in Arizona. Both Interstate Highways Nos. 17 and 40 (formerly U.S. 66) meet at Flagstaff. To the west are Las Vegas and Los Angeles; to the east, Albuquerque; Salt Lake City is north; and Phoenix and Tucson are south. Unlike its sister cities to the south, Flafstaff does not boast of a desert climate. Summer temperatures climb only into the 90s, while the winters are cold with snow and temperature readings dropping below zero.[4]

Although some American Indians live in Flagstaff, many more come into town from the Navajo and Hopi Reservations to shop, to visit with friends, to be entertained, and some to drink. Liquor is not permitted on either the Navajo or Hopi Reservation, and some tribal members come into town to buy alcohol. Many encounters by Indians with the criminal justice system in towns bordering the reservations, including Flagstaff, are the result of consuming alcohol within city limits.

Notes to Chapter I

1. Page numbers in parentheses cited in the body of the text hereafter refer to statements made to the Arizona Advisory Committee at its open meeting Nov. 17 and 18, 1975, as recorded in the transcript of the meeting.

2. The Navajo Times, Feb. 5, 1976, p. A-14.

3. Arizona Commission of Indian Affairs, 1976 Tribal Directory, p. 6.

4. U.S., Department of Commerce, National Oceanic and Atmospheric Administration, Local Climatological Data (1975), Flagstaff, Arizona, National Climatic Center, Asheville, N.C.

II. RIGHTS OF CRIMINAL DEFENDANTS

Rights of American Indians charged with a criminal offense while off reservations are protected by the United States Constitution, while the rights of Indians living on reservation are guaranteed by the 1968 Indian Bill of Rights.[1] Criminal procedures are designed to protect the rights of defendants from the time they are arrested through the final disposition of their cases. In 1973 the Arizona Supreme Court completely revised the State Rules of Criminal Procedures (R.C.P.), incorporating the guarantees of the United States and Arizona Constitutions and statutes.

Under the fourth amendment to the United States Constitution, police officers may arrest a criminal without a warrant (defining the nature of the offense) if they have probable cause, or the necessary information, to believe that person has committed a serious crime, or if they see a person commit an offense. Police officers can, if it is a lawful arrest, search the suspect and the immediate surrounding area without a search warrant.

In Arizona all misdemeanors which may result in a maximum $300 fine and 6 months in jail are charged by formal State action in Arizona Superior Court (lower) or by a complaint in justice (of the peace) or city (magistrate) court. All felonies are tried in superior court.[2]

Once arrested, a suspect must be granted a hearing (the initial appearance) before a magistrate within 24 hours or be released. At the initial appearance, the magistrate must confirm the identity of all defendants, advise them of the charges against them, and of their right to counsel and their right to remain silent, and appoint free counsel if necessary. The United States Supreme Court has ruled that free legal counsel must be provided to all indigents who face possible incarceration.[3] If the State fails to file a complaint against a suspect within 48 hours of the initial appearance, the person must be released.[4]

In Arizona a defendant has the fundamental right to counsel unless there is no prospect of confinement after judgment. Counsel must be appointed for those who cannot afford an attorney if punishment may result in a loss of liberty or the interests of justice require it. A defendant may waive the right to counsel if knowingly, intelligently, and voluntarily done in writing. The waiver may be

withdrawn at any time. The court may appoint an advisory counsel to assist any defendants who elect to defend themselves.[5]

The court must use a questionnaire approved by the Arizona Supreme Court to determine who receives free counsel. Public defender offices are required only in counties populated with 100,000 or more persons.[6] The public defender represents all indigents whenever authorized by law. In all other cases, the court may appoint private attorneys.[7]

At the initial appearance, the magistrate must also determine whether to release defendants on their own recognizance or to require them to post a bond, when charged with an offense not punishable by death or life imprisonment. In Arizona defendants must be released on their own recognizance (a promise to appear at future court proceedings) unless the court determines that their release will not reasonably assure their appearance at trial. The prosecuting attorney (either county or city) must show by more than 50 percent of the evidence that bond should be posted. If the court agrees, it is supposed to impose only those conditions of bond necessary to ensure that the accused will return for trial.[8] If a defendant breaks the condition of release, a warrant is issued to secure the accused's presence in court.[9]

When counsel is present or waived at the defendant's initial appearance before a magistrate, the accused will be arraigned (asked to plead) at the same time.[10] Otherwise, the defendant will be asked to plead no later than 10 days after the complaint is filed.[11] If a person is arrested for a felony, the suspect has the right to a preliminary hearing within 10 days of the initial appearance if incarcerated, or 20 days if not incarcerated, to determine whether there is sufficient cause to go to trial. The defendant may cross examine the State's witnesses and offer proof of innocence at the preliminary hearing.[12]

When a defendant is in custody, a trial must be held either within 120 days of the initial appearance or 90 days of the arraignment, whichever is the lesser. If a defendant is not in custody, trial must be held within the greater of the two time limits.[13]

The accused has the right to a jury trial if possible penalties for the charges are at least 6 months in jail or a $300 fine, or the crime is one of "moral turpitude." Defendants may waive, in writing, the right to a jury trial if they do so knowingly, intelligently, and voluntarily. Defendants charged with violating a State statute also have a right to trial by a jury for misdemeanors tried in city and justice courts. The denfendant's right to a trial by jury is waived if not asserted.[14]

Except in minor traffic cases, a judge will accept guilty pleas only if voluntarily and intelligently made in open court. Before accepting such a plea, the judge must personally address all defendants, in open court, inform them of their rights, and determine if they understand the nature of the charge, the nature and range of possible sentence, and the constitutional rights they are waiving, including the right to counsel and the right to plead not guilty.[15]

If a defendant is found guilty, the court will announce the sentence. The judge may permit payment of any fine or restitution or both, to be made within a specific time or in specified installments.[16] All appeals from the actions of justice and city courts are heard before the superior court.[17]

Notes to Chapter II

1. 25 U.S.C. §130 et seq.

2. R.C.P. §2.

3. Argersinger v. Hamlin, 407 U.S. 25 (1972).

4. R.C.P. §4.1.

5. R.C.P. §6.1.

6. Ariz. Rev. Stat. §§11-581 to 587 and Ariz. Atty. Gen. Op. 66-15. Only Maricopa and Pima Counties have populaticns over 100,000. Other counties, including Coconino, also have established public defender programs.

7. R.C.P. §6.5.

8. R.C.P. §§7.2 and 7.3.

9. R.C.P. §7.5.

10. R.C.P. §4.2.

11. R.C.P. §14.1.

12. R.C.P. §5.1 and 5.3.

13. R.C.P. §8.2.

14. Ariz. Const. Art. 2, §23; Ariz. Rev. Stat. §22-320; and R.C.P. §18.1.

15. R.C.P. §17.

16. R.C.P. §26.12.

17. R.C.P. §30.1.

III. CRIMINAL JUSTICE IN FLAGSTAFF

The Initial Encounter with Law Enforcement Officials

During its study the Advisory Committee determined that very few American Indians were willing to come forward to discuss their encounters with police officers for various reasons. Some did not want to resurrect a bad memory. Others feared reprisals from law enforcement officials. The Committee did hear from several Indians, however, whose experiences were relevant to this study.

The first two cases concerned American Indians charged with traffic offenses. The third case involved an Indian male charged with a felony. Two of the three cases have resulted in lawsuits filed in civil court for false arrest and harassment.

The first incident happened on May 3, 1975, when John Thompson, Sr., a Navajo who lives on the Star Route outside Winslow, was stopped by a Flagstaff police officer for driving on the wrong side of the road. Through an interpreter, Thompson described to the Advisory Committee what happened during his encounter with the officer. "The police checked both [my driver's licence and my pickup's title].... At that time there was no citation written out, and the officer told me to produce $12...." Thompson had only $7 so "the officer stated that...if you don't produce the $12 within five minutes 'I'm going to take you to jail.'" (pp. 23, 24.) Thompson's wife, who had been with him during this time, found a friend to write a check for the remaining $5, but the officer refused to accept the check. Thompson was arrested for driving on the wrong side of the road and taken to the Flagstaff Police Station. The police officer also accused Thompson of being under the influence of alcohol. (p. 30.) Once at the city jail, Mrs. Thompson finally raised the $12 to get her husband released from jail.

Because of his arrest and incarceration on an alleged minor traffic offense, Thompson went to DNA-People's Legal Services, Inc.,[1] in Tuba City for assistance. His attorney, Louise Gibson, wrote to the chief of police and said:

> The Thompsons are quite upset about this treatment. At no point were they told what

violation was committed....Instead of issuing a citation, Mr. Thompson was forced into the patrol car. He was never given an opportunity to [see or] sign the citation, but was taken into custody.[2]

Gibson also was concerned about the allegation that Thompson was driving under the influence of alcohol. She stressed that both Mr. and Mrs. Thompson are "devout Christians and never drink and were insulted by the officer's accusation."[3] Thompson has been the minister of a church for 28 years. The most important concern of attorney Gibson and the Thompsons was the fear "that Navajos and other Native Americans receive the same type of treatment by local authorities and that this will continue unless something is done to prevent it."[4]

On June 4, 1975, Elmo Maxwell, Flagstaff chief of police, responded to Gibson's letter. Chief Maxwell wrote that whenever there is a violation of State and Federal law, "it is the policy of this department to have...Indians living on the reservation post bond at the time of offense."[5] He said this differential treatment of Indians was necessary because "it is almost impossible to get a warrant served on the reservation."[6]

Chief Maxwell also indicated, "it is the policy of this department that we cannot accept a check for a night bond,"[7] referring to the officer's refusal to accept a check for $5. During an examination of this case, the Advisory Committee noted that the citation issued to Thompson listed the time of arrest at 8:37 a.m.[8] In summarizing his investigation of the incident, Chief Maxwell stated, "It is regretful that Mr. Thompson feels he was abused both verbally and physically, however this was not the intention of the officer. Also, there are always two sides to every story." (emphasis added)[9]

On November 5, 1975, Commission staff met with Chief Maxwell to ask him about the Thompson incident. He said that he had "heard about Mr. Thompson from [deleted] DNA" and that if they had a complaint they should go to court.[10] In February 1976, Thompson and two other American Indians did, in fact, file a complaint in Federal district court in Phoenix.[11] Although he was invited to appear at the Advisory Committee's open meeting in Flagstaff, Chief Maxwell failed to attend. City attorney Fred Croxen, who

attended the November 5 meeting, testified and among other comments addressed the Thompson case.

Croxen reported that Thompson was tried and he was found not guilty on September 30, 1975. Croxen "believe[d] there has been significant changes since that [reservation bond] requirement was a policy...." Croxen admitted that the bond requirement was an erroneous decision. He said, "having talked with the officer concerning this matter...I can certainly avow...that this is not standard practice, either on the part of that individual or on the part of police officers generally." (pp. 75, 84.) However, in a statement dated September 30, 1976, Croxen wrote that "[T]hough current practices differ...from...two years ago, a valid argument can be made for requirements of bonding when a violator resides beyond the jurisdiction [Flagstaff] of the enforcing agency."[12]

To date no disciplinary action has been taken against any officials involved in this incident although it is clear that the bonding procedure was improper. The city attorney only stated that "if the facts were that...the officer was on the take [receiving money from defendants without authorization] this would result...in immediate dismissal after a full investigation." (p. 75.)

Arlene Tuchawena, a Hopi who teaches third grade at Tuba City Elementary School, had an experience similar to Thompson's. Tuchawena was attending Northern Arizona University (NAU) and living in Flagstaff during the summer of 1975. On either July 3 or 4, she was driving in town with her cousins when she failed to stop at a stop sign. She did not notice the stop sign because "prior to that [time] there used to be a yield sign." "Just to the right of me there was a police car...so I pulled right over.... [The police officer] approached the car and asked for my driver's license and I gave it to him," she stated. (p. 15.) It is at this point that the similarities between the two incidents occurred. Tuchawena said:

> ...he looked at my driver's license and...says...well, you're from the reservation. I said yes. He says, well, you're going to have to go down to the police station and post bond. And I asked him why? And he says...all reservation Indians...need to go down to post bond...(p. 15.)

She was taken to the police station despite her explanation to the officer that she was a resident of Flagstaff and going to summer school at Northern Arizona University. The officer retorted, "It doesn't show it on your driver license." (p. 17.) She continued protesting at the police station until a second officer intervened on her behalf. Tuchawena related, "[He recognized that] I was a resident of Flagstaff and no resident of Flagstaff should be brought in to post bond, [but rather]...have a citation written out." (p. 18.)

Tuchawena was disturbed by the treatment she received, even though her $12 bond was returned. As a result, she arranged to meet with chief city magistrate William C. Brady.

Judge Brady was familiar with both the Tuchawena and Thompson cases and was dismayed by the situations described. He learned about the cases from DNA-People's Legal Services. Judge Brady commented on the Thompson case:

> [Louise Gibson] told me she had contacted the chief of police and that she was told by him that was standard procedure and it was set up by the city court. I told her no way, a traffic citation may be signed [acknowledged] by the person getting it unless there are extraordinary circumstances. (p. 139, 140.)

Judge Brady accompanied Tuchawena for a meeting with the police chief. She told Chief Maxwell about the incident and Maxwell said he was going to have a talk with the officer. The judge informed the chief that the bonding procedure was erroneous. According to Judge Brady, "...Chief Maxwell said, well, we always do it to Indians and I said, well you're wrong, that procedure should be stopped immediately. And as far as I know it was." (p. 140.)

Chief Maxwell was asked to respond to Tuchawena's allegations by MSRO staff but did not do so. The city attorney, responding to the allegations, stated that the case had never been brought to his attention.

Unfortunately, the procedure apparently is still in use. Phillip Begay, a Navajo residing on the reservation, contended that on December 12, 1975, the Flagstaff police forced him to submit a cash bond of $27.50 for a minor

traffic offense.[13] The Flagstaff Police allege that Begay was released on his own recognizance.[14]

The Advisory Committee heard about one case of false arrest for a felony, although very few American Indians in Coconino County are arrested for serious offenses.[15] Norman Jensen, a Navajo, was attending summer school at Northern Arizona University. In the predawn hours of July 28, 1975, a Flagstaff police officer and a NAU security officer broke into Jensen's room without a warrant and arrested him for rape without informing him of his rights.[16]

Jensen was not permitted to clothe himself fully before being transported to the emergency room of the Flagstaff Community Hospital and then to the Coconino County Jail where he was fingerprinted, photographed, charged, and stripped of his clothing. Next he was placed in a cell for 10 hours without clothes and only a blanket to cover himself. During this period, he was not permitted to contact his attorney, to raise or post bond, or to be released on his own recognizance.[17]

That evening Jensen protested the treatment he had been receiving. He was informed orally by police officers that he must sign a waiver releasing the Flagstaff Police Department from liability for false arrest before they would release him. He agreed to those conditions, received his clothes, and signed a waiver. Jensen was told by police officers that his arrest and detention had been a mistake and that the arrest would not appear in the newspaper. Despite the assurance of destruction of the arrest record, an article in the Arizona Daily Sun on July 29, 1975, reported that Norman Jensen had been arrested for rape.[18] Because of the humiliation he suffered as a result of the article in the newspaper, Jensen filed lawsuits in the U.S. District Court and the State superior court asking for $100,000 in damages against the Coconino County sheriff, the Flagstaff chief of police, and Northern Arizona University security department.[19]

The Jensen case raises serious questions about the officers involved and their conduct. According to Robert L. Miller, an attorney for DNA-People's Legal Services, Inc.:

> Norman Jensen was arrested for rape...upon highly suspect probable cause. The probable cause consisted of the fact that Norman was an Indian

> [this was the victim's description of the second rape suspect] who roomed with...the registered owner of the vehicle in which the two rapists transported their victim.[20]

The Arizona Advisory Committee asked the City of Flagstaff to comment on Jensen's allegations. In the September 30, 1976, statement signed by the mayor, city manager, and city attorney, the Flagstaff officials declined to respond to this specific allegation. Instead, they wrote that:

> [Several] of these incidents are the subject of current litigation in the United States District Court and will find ultimate resolution there. The city, of course, takes issue with the allegations in those cases and indeed a review of the facts and circumstances surrounding each incident reveals there was ample probable cause for the arrests and that the procedures were founded in statutory mandates of authority as interpreted at the time.[21]

Arrest Information

Statistical information reveals that American Indians are arrested in excess of their proportion in the population. The 1974 annual report of the Flagstaff police department indicates that the city population is 89.5 percent white, 5.1 percent American Indian, 3.9 percent black, and 1.5 percent other. According to the report, "It is statistically possible that every Indian in Flagstaff could have been arrested at least once in 1974, since the total number of Indians arrested is nearly 300 more than the local resident Indian population."[22]

Approximately 40 percent (1,770 arrests) of all persons arrested in Flagstaff in 1974 were Indians. Of those, 65 percent were arrested for four alcohol-related offenses: driving under the influence, 357 arrests; liquor law violations, 257 arrests; disorderly conduct, 421 arrests; and vagrancy, 118 arrests.[23]

Figures for 1975 are comparable. American Indians accounted for 43 percent (2,240 arrests) of the 5,256 persons arrested in Flagstaff. Fifty-four percent of the arrests were made for the four alcohol-related offenses. Of

those, 72 percent or 298 of the 414 persons arrested for liquor law violations were Indians. Similary, Indians accounted for 60 percent or 442 of the 736 arrests for disorderly conduct; 60 percent or 111 of the 186 arrests for vagrancy; and 35 percent or 529 of the 1,493 arrests for driving under the influence.[24] Stressing the seriousness of the problem, the report noted, "not included in the liquor offenses were the 1,896 persons taken to the local alcoholism reception center before it was closed for lack of funding."[25]

These figures may represent a number of unnecessary arrests of American Indians and are most disturbing since public intoxication was decriminalized by the Arizona Legislature in 1972.[26] According to the State attorney general, "the legislation intended, after much deliberation, to provide a means for the treatment of alcoholism and alcohol-related problems outside the criminal justice system."[27] Under the law, communities were to establish Local Alcohol Reception Centers (LARC) for evaluation, treatment, and prevention of alcoholism and intoxicated persons.

Both a study by the Arizona Civil Liberties Union (ACLU) and the testimony at the open meeting in November 1975 indicated that the great majority of the Indian defendants are arrested for alcohol-related offenses. The northern chapter contracted with a first-year law student, John Kammer, to observe city municipal proceedings during the summer of 1975. According to Bryan Short, chairperson of the northern chapter, Kammer "...sat in Flagstaff Municipal Court from June 23 to July 31, 1975 and observed 379 in-custody arraignments and 25 trials." (p. 91.) The observations concluded in the issuance of a report, Flagstaff Municipal Court Proceedings and the Rights of Defendants, by the northern chapter of the ACLU.[28] The report was publicly released and discussed at the Advisory Committee's open meeting on November 17, 1975. The northern chapter has since released its report based on observation of criminal justice at the 1976 Flagstaff Pow Wow. It is attached as appendix B.

In July 1975, chief magistrate Brady reported that the largest number of alcohol-related offenses (150) were arrests made for driving while under the influence (DWI); 100 were for disturbing the peace; and 90 arrests were liquor violations such as drinking from an open container.

Judge Brady reported that there were 1,059 cases processed during the month of July 1975.[29] The types of arrests recorded for June 1975 were similar to those made during July. Out of a total of 993 cases in June, 204 were for DWI and 101 for disturbing the peace.[30] When asked whether these figures were typical of arrests made of Indians, Judge Brady said, "I would say possibly 55 to 65 percent [of the misdemeanor defendants are American Indians]." (p. 158.) He emphasized that the Indian defendants "are charged with the low misdemeanors, that is the alcohol-related offenses, in the majority." (p. 159.)

Presiding superior court Judge J. Thomas Brooks said that in 20 years he could not remember by name one felony case involving an American Indian that was not alcohol-related.[31] In justice court, Judge Garcia stated that 20 percent of the defendants are Indians. Of that number 90 percent are arrested for DWI. (p. 39.)

Appearances in Court

After a person is arrested, he or she must appear before the magistrate within 24 hours or be released. Generally, one of three persons will preside over all initial appearances in the Flagstaff area. Chief magistrate William C. Brady and associate magistrate A. R. Brown, Flagstaff Municipal Court, hear city code violations and State misdemeanors committed in the city. In addition, they conduct initial hearings on weekends for offenses which occur outside the city limits. Justice of the Peace Joseph Garcia, who sits in Flagstaff, conducts initial hearings for defendants who commit offenses in Coconino County. However, none of the three judges is an attorney or has attended law school. Judges Brady and Garcia have attended 1-week judicial conferences in Reno, Nevada, and Boulder, Colarado.[32] Judge Brown, who presides at court hearings 6 hours a day, 3 days a week, indicated that his training consisted of duties as a city magistrate.[33] Although the United States Supreme Court recently held that city magistrate court judges do not have to be attorneys as long as the defendant is guaranteed a new trial in State court,[34] there has been some criticism of nonlawyer judges in Flagstaff. For example, superior court Judge Brooks believes magistrates should be trained in counties where there is sufficient population. While he complimented Judge Brady's work, he noted that the other judges do not always follow the Arizona Rules of Criminal Procedure.[35]

Ron Lee, public defender for misdemeanor cases in Coconino County from March 1973 through June 1975, agreed with Judge Brooks and stated that it is difficult in a town the size of Flagstaff to recruit attorneys as judges unless the salary is raised. Lee emphasized that both clients and attorneys appreciate judges with legal training.[36]

Frederick Aspey, a member of the law firm that serves as public defender for all misdemeanors and felonies in Coconino County, concurred with their opinion and commented, "[I]t wouldn't hurt to have an attorney be a...justice of the peace or presiding judge in city court." (p. 292.)[37] The most emphatic criticism of the present nonattorney judge situation, however, came from the ACLU committee which investigated the Flagstaff Municipal Court. Bryan Short, chairperson of the northern chapter of ACLU, said, "It's been recognized by the [California] Supreme Court [in Gordon v. Justice Court, 525 P. 2d 72] and also by [courts in] Phoenix and Tucson that judges should be attorneys...." (p. 109.) It was his belief that, "The magistrates must be attorneys because that's the only way to insure that defendants will receive complete and adequate arraignments, fair trials and proper sentences." (p. 110.)

Both Judges Garcia and Brady disagreed with those persons asserting that magistrates must be attorneys. In defense of the value of nonattorney judges, Judge Brady said, "There are over 30 States which have criminal trial courts in which the presiding judge is not an attorney." (p. 147.) Judge Garcia said:

> [If all Justices of Peace were attorneys] I think it would lose your people's right...because right now you go to the justice system in the lower courts...because you're going to be heard...under what I call justice. You get an attorney [and]...he's going to weigh the legal points [the law]...." [p. 50.]

Responding to his answer, a member of the Committee asked Judge Garcia if judges were required to follow the Arizona Rules of Criminal Procedure. Judge Garcia's answer was, "We do follow them."[38] (p. 51.) Judge Brady pointed out that a requirement for attorney judges was not practicable in Arizona, "due to the fact that [in] our outlying districts we don't even have any attorneys out

there. [N]ot that I'm implying that they will make better judges...than myself or Judge Garcia...." (p. 148.)

Presently, a defendant's initial and possible most important appearance in court is before a nonattorney city magistrate or justice of the peace. This appearance is the most important aspect of a case because the great majority of defendants plead guilty. It is at this point, before the plea is entered, that the protection of the defendants' rights is most cruicial. Bryan Short reported that of the 379 incustody arraignments observed by John Kammer from June 23 through July 31, 1975, roughly 93 percent of the defendants pleaded guilty. (pp. 91 and 95.) As indicated earlier, the Flagstaff police records show that a great number of the persons appearing in magistrate court are American Indians. In fact, of all the persons appearing in city court during June and July 1975, the ACLU report focused on 96 defendants. Of those, 20 were identified as Anglo, six as Chicano, two as black, and 68 as Indian.[39]

Advisement of Rights: The Need for Interpreters

Because of the volume of misdemeanor complaints, the initial appearance and the arraignment are combined in the majority of cases and conducted in the magistrate courts.[40] Members of ACLU expressed concern about the reading or advisement of rights by judges in Flagstaff. All defendants who appear in court on a given day are read their rights in a group (termed en masse arraignment) and the presiding judge takes a relatively short time, ranging from 4 to 7 minutes, to read the legally complicated advisement of rights. The ACLU was extremely critical of this proceeding. Short stated:

> Once the defendant gets in court, he is read his rights en masse. That is, all the defendants being arraigned for that particular day are read a statement of their rights [in a group]. There are two problems with this, first is that the reading may contain statements which encourage a guilty plea on the part of the defendant....The second problem that occurs with the en masse advisement of rights is that if a defendant doesn't understand English, he doesn't understand the rights.... (pp. 101-02.)

Judge Brady, ACLU, and Native Americans for Community Action (NACA), funded by the National Institute on Alcoholism and Alcohol Abuse, see the interpretation of the en masse proceedings into the Navajo or Hopi language as a solution to problems of comprehension by Indians. They expressed their belief that interpreters fluent in the Navajo and Hopi languages are needed by the courts to ensure understanding of rights by Native American defendants. Tom Gonzales, a senior counselor at NACA stressed:

> The interpreter problem...is the greatest problem in Flagstaff. I've talked with at least one of the judges in the city and he feels that it is a problem too and has made efforts to solve it. It seems that priorities among the administrations, among the people that fund these types of programs, is where the problem really is. (pp. 65 and 66.)

Judge Brady admitted that translating the en masse rights in the Navajo language is desirable. "I was going to hire a fulltime bailiff...and he was to be...an educated Navajo and...he would understand the workings of the court...." (p. 157.) The judge submitted an application for the bailiff who would also be an interpreter through the Flagstaff city government to the Northern Arizona Council of Governments (NACOG). This funding request was denied. He said, "when I came back [from a week's vacation], there had been $5,000 granted instead on the proper way to file papers...." (p. 157.) According to William C. Wade, NACOG executive director, at no time has the city of Flagstaff ever submitted a proposal for an interpreter/bailiff.[41] The city has since responded that it has funded a position to provide "an interpreter in the major Indian language of the area."[42] It is still unclear whether this position is fulltime and whether or not someone has in fact been hired.

Judge Garcia also was concerned about the lack of interpreters and said that justice court needs an interpreter to "make sure good communication [exists] between the defendant and the court. I run across it sometimes. [W]e have to use trustees from the jail to interpret [because there are no funds available to hire an interpreter] and they're not really qualified interpreters." (p. 40.) But then he added, "When somebody interprets for me...they don't do the advising. They don't give them their legal rights...." (p. 56.) NACA and ACLU also stressed the

need for interpreters who are familar with legal terminology. Short judged that, "the city of Flagstaff has a very definite responsibility to provide translation...." (p. 109.)

Although the need for interpreters was not questioned by anyone at the hearing, the qualifications for an interpreter were debated. Judge Brady used NACA interpreters over the July 4th weekend in 1975. (p. 141.) Because of that experience, Gonzales expressed concern about the qualifications of a court interpreter. "I think that...legal matters are very difficult for anyone to understand," he said. "I think that [court] interpreters...would have to know...enough about the law to adequately explain...the legal proceedings." (p. 70.)

Judge Brady concurred, "With a fulltime interpreter...the rights will definitely all be read in Navajo by someone who is more apt to explain it in a better way than...from a prisoner who happens to be in custody at the time...." (p. 163.) The present procedure of using available prisoners to interpret for non-English-speaking Indians is far from adequate. For one thing, fellow defendants may not be available to translate for the judges. At one such time the ACLU report noted that Judge Brown asked all defendants who did not know English to raise their hands.[43] In contrast, interpreters are available in superior court whenever needed.[44] Freddy Howard, a Navajo language broadcaster for KOAI-TV in Flagstaff, formerly with legal service agencies on the Navajo Reservation, expressed concern about the use of prisoners as interpreters. Based on his experience as an interpreter in tribal, State, and Federal court and having spent time in jail, he observed, "I have talked to a lot of people...in jail, and most of the ones that didn't understand a word of English pleaded guilty...." (p. 379.) Howard further explained that:

> ...the average Navajo can not do [interpretations]....[Y]ou just can't grab a piece of paper like this and then read it off to a non-English-speaking Navajo....[A]s far as he's concerned, a lot of these laws do not exist for him. He's never been associated with them. [H]e's never heard it before..." (p. 375.)

He emphasized that the courts must bridge the cultural gap through the use of an interpreter.

> You [interpreters] have to...explain why these things exist in order for them [Indian defendants] to understand it and this is the main problem in these courts that I've seen. I mean you can take an Indian in there and then you can say do you understand this and he'll just...mumble yeah, without...really understanding the consequences of it. This is...a problem that I see here in Flagstaff....You have to have a really qualified interpreter to make these non-English-speaking Indians understand...what is involved here [in criminal proceedings]. (pp 375, 376.)

Howard suggested interpreters could be trained by the Navajo Tribe and enroll in the paralegal program at Northern Arizona University. Chief Roland Dart, of the Navajo police, agreed with Howard, noting that the NAU program is "designed primarily for Native American people, and their advocate system on the reservation." (p. 241.) These programs must be extensive according to Howard because "it takes [4 to 5 years] to really develop a good...interpretation method. [S]ometimes...you have to explain things backward...in order for people to understand." (pp. 376, 377.) In closing, Howard remarked, "It's very hard for a Navajo or an Indian [who] doesn't speak English to come forward and say I don't understand English." (p. 378.)

Right to Counsel

One of the most important rights to be communicated to defendants by the judge is the right to counsel. If a defendent faces the possibility of incarcaration and is unable to afford an attorney, the court must appoint one. Since Coconino County has less than 100,000 people, it is not required by State law to establish a full-time public defender's office. Beginning July 1, 1975, the superior court contracted with the law firm of Aspey, Watkins and Diesel to work as the county public defender for $47,000 per year with free photo-copying services. Aspey's firm represents indigent clients charged with felonies in superior court and indigent defendants charged with misdemeanors in justice court. Previously the court employed four attorneys as county public defenders with salaries of $10,000 per year each. Aspey, one of three present public defenders, believed the $47,000 contract to be only a stopgap measure.[45] Although other counties have

similar public defender contracts, Aspey stressed the need for a full-time public defender system in Coconino County. He described criminal defense cases as priority ones for his law firm. However, he admitted that they encountered problems in providing the best defense for their clients because they do not have adequate funds for investigations and must ask the superior court for money for an interpreter whenever they have a client who does not speak English. Yet, on the other hand, the county attorney has a budget of $285,000, enabling him to prepare a better case for the prosecution.[46]

"I think the ideal situation would be to have both a full-time county attorney and a full-time public defender," Aspey stated. (p. 282.) County attorney J. Michael Flournoy praised the current public defender system and saw no problems with the use of private attorneys. Gonzales expressed fear that the present system could result in a potential conflict of interest, since private attorneys have other duties. (p. 67.) Flournoy, on the other hand was positive that the Coconino County system is better than that mandated by a State requirement establishing a full-time public defender's office in counties of 100,000 persons or more. He believed that the public defenders in Flagstaff know as much as anyone in the Nation (about criminal law).[47] While Flournoy's statement may be true, it applies only to State superior and justice of the peace courts. Aspey pointed out, "In city court, Judge Brady appoints lawyers several times a week on a rotating basis from the local bar to represent people charged with crimes." (p. 281.)

Because the money granted for attorneys to represent indigent clients in city court is a mere $2,000 a year, Judge Brady has made the definition of indigency more stringent.[48] A budget this small restricts Flagstaff to a mere 50 hours a year of public defenders' representing clients, since attorneys are paid a fee of $40 per hour.[49] Fred Croxen admitted that even this system was operated on an "ad hoc basis. We have no public defender system as such." (p. 82.) A similar conclusion was reached in the ACLU report, which found that the right to counsel is not in fact provided for defendants in Flagstaff. The report noted:

> In the Flagstaff Municipal Court, counsel is only appointed after an accused has pled not guilty, and then, only if the accused requests the

> appointment of a counsel....It should be presumed [by the court] that the accused wishes to be represented by an attorney and that the attorney should be available at the arraignment.[50]

Aspey commented critically, "[The] budget for public defenders...isn't adequate...I think if the city would increase its budget...I'm sure the problems that were alluded to in the [ACLU] report would improve." (p. 296, 297.)

Another problem mentioned during the hearings was that very few people request a public defender because very few persons plead innocent. In July 1975, Judge Brady reported that out of 1,059 cases only 65 or 6 percent of all defendants plead not guilty;[51] 89 or 9 percent of the 993 defendants plead not guilty in the previous month.[52]

One of the reasons given for the low number of not guilty pleas entered by defendants was the length of time it takes to see a public defender. Aspey explained:

> Under our law, within 24 hours of an individual's arrest, he's entitled to be taken before a magistrate, have the charges read to him, advised of his rights...and then have an attorney appointed to represent him. Normally, we will receive an order appointing our firm to represent the individual anywhere from a day to two days later and by then my first contact with him is either in the county jail or in my office about three days after the arrest. (p. 295.)

Although he was speaking about superior and justice court, Aspey alluded to the existence of the same problem in city court. (p. 269.) Short testified that during the ACLU's review of city court proceedings, "in only a handful [of cases] was counsel present." (p. 91.)

Right to Bail or Release on One's Own Recognizance

With a more effective public defender system, American Indians might continue to plead guilty when denied release on their own recognizance by the courts on a plea of not guilty. Both Robert Gaylord, a Flagstaff attorney and a member of ACLU, and Bryan Short viewed the failure to release Indians on their own recognizance as contributing to

the high number of guilty pleas. Gaylord said, "It is our feeling that the threat, the requirement of a bond, was one of [the] factors [which] went into encouraging people to enter a guilty plea...." (pp. 117, 118.) Short reasoned, "It's quite possible that defendants who might have been released by the court on their own recognizance plead guilty because they just didn't understand what was going on...." (p. 118.)

Issues related to bail and extradition procedures from the Navajo and Hopi Reservations arose repeatedly during the informal hearings in Flagstaff. The requirement of bail for Indians before they even appear in court has already been discussed in the Arlene Tuchawena and John Thompson cases. However, some witnesses stated that the problem facing Indian defendants once in court is also serious. Short charged, "[T]he right to be released on one's own recognizance [without having to post a cash bond] is apparently not always mentioned in the en masse advisement." (p. 106.) His allegation is serious because the Arizona Rules of Criminal Procedure presume that defendants charged with a bailable offense will be released on their own recognizance unless the court determines that the accused will not appear at future proceedings.[53]

Both Judges Brady and Garcia denied the allegation that in their courts it is difficult for defendants to be released. "I'd say better than 50 percent [of Indians are released on their own recognizance]," said Judge Garcia. (p. 36.) Judge Brady stressed:

> The only time that you will be denied release on your own recognizance by me in the Flagstaff city court is if you have a prior [conviction], when you failed to appear for an arraignment or if you failed to comply with the court order where you were given time to pay and didn't do it. (p. 140.)

Judge Garcia was quoted extensively in an August 18, 1975, article in the Arizona Republic on this subject. In that article the judge said, "Bail on a bondable offense is a constitutional right." Nowhere in the article was the judge quoted as mentioning that under Arizona law the presumption is to release defendants on their own recognizance. The article quoted Garcia as saying that a higher number of Indians living on the reservation are denied release on their own recognizance because "it's

harder to extradite them off the reservation than it is from other States or countries."[54] When asked by the Advisory Committee about his allegation that over 90 percent of the Indians fail to appear in court after posting bond or being released, Judge Garcia hesitated and said, "Yes, well, that's what I say, they either post a bond and appear or fail to appear [and] they forfeit the bond." (p. 47.) The judge never specifically defined the 90 percent figure for the Advisory Committee.

Judge Brady was also critical of the large number of tribal members failing to appear for trial after they post a cash bond. He does not issue arrest warrants for persons on the reservation, however, because he believes that sooner or later 90 percent of them will return to Flagstaff where they will again be apprehended.[55] Judge Brady reported that out of 345 warrants outstanding, 228 had been issued for Indians and of the 288 outstanding fines, 185 belonged to American Indians.[56] The newspaper article also mentioned problems encountered when extraditing American Indians from the reservation to appear for trial. According to the article, both judges alleged that reservation police would not serve arrest warrants or extradite Indians from the reservation. Chief Dart, of the Navajo police, acknowledged that several years ago some of the allegations would have been valid but have since been resolved.[57]

After the article appeared, both judges met with Dart in an attempt to change the situation. The chief magistrate stated, "[T]here is better cooperation [as a result] of that meeting [with Chief Dart]. However, I still do not process any warrants on the reservation." (p. 160.) Judge Garcia was somewhat more enthusiastic about the results of the meeting. "There was [a problem] at one time, up until efforts were made.... After he [Dart] gave us his guarantee and his assurance of cooperation, I haven't had any problems whatever." (pp. 36, 37)

Flournoy, critical of attempts to extradite Indians from reservations, commented, "I can't even remember ever getting someone extradited off the Navajo Reservation in my 8 years as county attorney." (p. 199.) Yet he also stated:

> I don't really know what our office could do to improve our relations with the Navajo...police or Hopi police or the BIA [Bureau of Indian Affairs]

people because we're all on great terms and I know of no disagreement we've ever had. (p. 189.)

Given these conflicting statements, the Advisory Committee asked Flournoy for the number of extradition requests and persons extradited from the reservation during the past 2 years. Flournoy was unable to give the Advisory Committee any specific information whatsoever.[58] In contrast, Chief Dart reported that his office received five requests for extradition of Navajo defendants from January through September 16, 1975. One of those requests was from Coconino County. The arrest warrant was received on July 21, 1975. The defendant was served with the warrant 3 days later and extradited.[59]

Responding to the question of extradition difficulties, Chief Dart stated, "I was contacted...as a result of the attention given the problem in the news article....Prior to that...I never had any communication whatsoever with any of the county officials...concerning any problem of extradition." (p. 223.) Perry Allen, chief prosecutor for the Navajo Nation, was embittered by the allegations and gave a historical view of the problem. "[The extradition problem] goes back to 1960. At that time I called it bootlegging Indians off the reservation. They used to take Indians off the reservation without extradition." (p. 342.) When the tribal prosecutor's office was created in 1971, bootlegging stopped. "We make it clear that each border town is to follow the procedures of the Navajo Tribe. We called a meeting of every town...to discuss the extradition proceedings. Flagstaff never showed up." (p. 343.)

It was not the only time that Flagstaff failed to cooperate, according to Allen,

> There's a judge here in town [who] sent a warrant to my office... I called him [to say] I needed some more information....He informed me that he didn't have time to talk to me, that I would have to talk to his clerk, who sent out the warrants. So the conversation ended. (p. 343.)

Although the Hopi Reservation is close to Flagstaff, it has apparently not experienced the conflicts that exist between county and city officials and the Navajo Nation. Jack Hennessy, recently appointed criminal justice

coordinator for the Hopi Nation, was unaware of any extradition requests (from courts in Coconino County) either before or after he assumed his present position. (pp. 244, 245.)

In response to problems raised, Perry Allen suggested, "[First] if [the border towns] want these extraditions, we have laws, we have procedures, they're going to have to follow these procedures." (pp. 344, 345.) "[Second] I'm sure if the chief of police wanted [to] he would have met me here this morning...to try and work out some of these problems." (p. 349.) He pointed out to the audience and Advisory Committee that Chief Maxwell of the Flagstaff police was notably absent from the hearing. The chief prosecuter's observations are most interesting because the Northern Arizona Peace Officers' Association, organized by county attorney Flournoy, was formed to discuss such problems as bail and extradition.[60] Captain Tincer G. Nez, Navajo police-Tuba City office, indicated that the organization has already had occasion to discuss problems related to extradition. (p. 257.) Still, Chief Dart remarked that the Navajo police department has little relationship with the city of Flagstaff although they work closely with the Coconino County sheriff. (p. 226.)

At the time of the hearing the issue of extradition remained controversial for both city and county officials and representatives of the Navajo Nation. On one hand, Navajo officials felt their procedures for extraditing residents of the Navajo Reservation were not respected by city and county officials. (pp. 221, 222, 345.) On the other hand, those officials felt it is impossible to extradite an Indian from the reservation even if they carefully followed the required procedures. (pp. 36, 37, 143, 160, 199, 274, 275.) Commenting on the situation, Lt. W. R. Jenkins, of the Arizona Department of Public Safety, said, "[I]t's going to take some instilling of confidence in the reservation officers...before the extradition problem is corrected)....I think that it [the problem] still probably exists." (p. 275.)

It is because of the extradition problem that Indians find it difficult to be released on their own recognizance (OR). According to the ACLU, "in most cases where a defendant pleads not guilty...the presumption against OR remains intact, and a money bond is set. Invariably the amount of the bond corresponds to the amount of the usual

fine for the offense charged."[61] Judge Garcia admitted that when a defendant does not appear at trial, "the usual procedure involves forfeiture of the...bail. Usually it amounts to what the fine would be in any given case. Then we don't have to extradite him."[62]

Right to Trial by Jury

Defendants who plead not guilty and go to trial account for less than an average of 10 percent of all criminal cases. Of the cases tried, fewer than 20 percent are heard before a jury, although every defendant who faces the possibility of incarceration for violating a State statute has the right to ask for a jury trial.[63] Of all cases heard in city court, less than 2 percent of the trial cases are heard by a jury of the defendant's peers.[64]

Almost 20 years ago the Arizona attorney general ruled that Indians living on a reservation could not be excluded as jurors although State courts do not have jurisdiction to enforce a subpena for their appearance in court. "While it is true that the law does not presume the court will do a needless thing, if a Native American on the reservation is served, and he does in fact appear, the action has not been needless."[65] Once placed on the jury list and selected, a reservation Indian must be subpenaed to serve as a juror. To do otherwise would violate the due process clause of the 14th amendment to the Constitution and a Federal statute which makes it illegal to disqualify a citizen as a juror because of race.[66]

In July 1975 an Indian defendant challenged the trial jury panel selected to hear his case in Flagstaff on the grounds that American Indians were systematically excluded from the jury list. On July 16 the superior court ruled that the "jury panel was constitutionally empaneled."[67] Judge Joyce Mangum admitted the jury selection raised "some questions [but] it did not require a determination of unconstitutionality."[68] The court held that the county clerk can excuse jurors based on her experience that sufficient grounds exist.[69] Judge Mangum asserted this in spite of the fact that of the 989 potential jurors, of whom 154 (13.4 percent) were American Indian, only 16 Indians (2.7 percent) out of 578 qualified jurors remained on the list. The court emphasized:

> [M]ore hardship was shown by Indian jurors and therefore the percentage of their excuses were higher than non-Indian population. This is not due to a systematic exclusion...but to the peculiar circumstances of these people living in a very large reservation area with poor roads, telephone, and mail service.[70]

Aspey, the defendant's advisory counsel, did not appeal Judge Mangum's ruling because the defendant was acquited of all the charges. (p. 286.) Aspey remarked, "It is my feeling that even though everyone was acting in good faith...that the cultural differences because our culture and the Native American culture were such that the current procedures resulted in them being discriminated against." (pp. 289, 290.)

MSRO staff has learned that American Indians were excluded from the panel in some cases because they did not send in their completed questionnaires. (p. 286.)

The superior court made several changes after the challenge; the most important change being the issuance of specific guidelines by Judge Thomas Brooks for exempting persons from jury service. Court clerk Jo Wycoff can now excuse a juror only for 1 of the 15 reasons enumerated by the judge.[71] Some of the enumerated excuses are business hardship, child care responsibilities, lack of transportation, health problems, and felony conviction.[72] If the excuse is not one of the 15, only the court can exempt a potential juror from jury duty.[73] The clerk can no longer exclude potential jurors because they do not have a telephone, live in a remote area, or are unable to write English.

Despite the recent changes, Wycoff said, "[T]rying to reach Indians on the reservation is extremely hard. I have tried [to do it] three times...by registered, certified mail...and even after they have signed for these letters, they do not respond...I think I had around 40 [American Indians] in this category." (pp. 209-10.) She admitted, "Many times when we call a jury for a given trial, we are not given sufficient notice to get notice to the jurors by mail. And therefore we resort to telephoning them." (p. 217.) Although the clerk cannot exclude persons from the jury panel because they have no telephone, in effect they are excluded. The figures for jury service in 1975 document

the extent of the exclusion. Wycoff wrote, "Out of 1,000 jurors who were subject to call after being qualified during 1975 there were approximately 63 (6.3 percent) Native Americans, with 18 (1.8 percent) actually serving on criminal trials."[74]

Since the only office of the court clerk is in Flagstaff, Chief Dart offered the assistance of the Navajo police in the jury selection process. His assistance would facilitate recruiting Indian jurors from outlying areas as far as 100 miles from Flagstaff. He pointed out that in addition to delivering jury notices the Navajo officer could interpret the content of the notice for the individual, if necessary. (p. 237.) Aspey endorsed Chief Dart's offer and suggested, "[T]he voter registration list in Coconino County could be supplemented by...the motor vehicle registration list or perhaps the census list that's kept by the Navajo Nation." (p. 288.)

The Guilty Plea

Among the important constitutional rights to be protected is the right of criminal defendants to plead not guilty. This right can be relinquished at any time from the initial appearance before a judge until the jury reaches a verdict. Once relinquished it cannot be restored. Before accepting a guilty plea, the judge must personally address the defendant in open court; use a guilty plea checklist developed by the Arizona Supreme Court to inform the accused of the charges against him or her; and determine if the defendant understands the nature of the charges, the nature and range of possible sentence, and the constitutional rights which are waived by pleading guilty.[75] The judge must verify the defendant's understanding of the guilty plea by initialing the checklist. In addition, both the judge and the defendant must sign the guilty plea checklist.

The ACLU expressed concern that this procedure was not being followed by at least one Flagstaff magistrate. The members of the organization were so upset that Robert Gaylord appealed the guilty plea of an American Indian defendant to superior court. Judge Brooks released the defendant because she had not read the guilty plea checklist even though she had signed it. (p. 104.) In addition, the magistrate had not initialed any of the 11 spaces on the guilty plea checklist as required. The superior court hearing revealed that the city magistrate in this case

considered it to have been normal in all respects. (p. 104.) Based on their investigation of this case and previous observations of the administration of guilty pleas at a Phoenix court, the ACLU recommended a modification in the Flagstaff city court procedure. Short said, "In...Phoenix the defendant was given the [waiver of counsel and guilty plea] forms, told to go and sit down and read them. If the defendant indicated that he still wanted to plead guilty, then the judge read [each accused] individually each one of the rights." (p. 105.) If the judge still did not think that the accused understood the rights, Short pointed out, '[T]he magistrate went over it and tried to explain it in simple language." (p. 106.)

When asked to respond to the ACLU's concerns, Judge Brady said, "[T]he associate magistrate is quite elderly. ...[H]e sometimes doesn't listen as well as he should. But hopefully this will be corrected before too long [by the hiring of another full-time magistrate]." (p. 68.) After the hearing, the City of Flagstaff reported that a full-time associate magistrate has been employed.[76]

Another issue raised at the hearing is that it is easier for a defendant to plead guilty than not guilty. Short noted, "If a defendant pleads guilty, he is allowed some length of time in which to get the fine together...[I]f he pleads not guilty, he is faced with the problem of coming up with bond...." (p. 106.) He summarized the problem associated with guilty pleas:

> The judges must protect the presumption of innocence by not encouraging the guilty plea, not accepting pleas where no factual basis exists. He must live up to the legal guaranteed presumption that defendants be released [on their own recognizance] unless specific facts dictate against such a release. They must make sure defendants understand their rights to reasonable length of time for the paying of fines. (p. 111.)

The ACLU report was written because "We got to the point where the most dramatic change I think has to come in the attitude of the city council, and...city councils all over this State..." said Gaylord. (p. 173.) He added that Flagstaff was selected not "[B]ecause it was unique but because it was one of many of these low courts that have lots of misdemeanors [and] no money." (p. 173.) But Gaylord

admitted, "[T]he Flagstaff Municipal Court is superior to many of the other justice courts in...Arizona." (p. 169.)

Notes to Chapter III

1. The initials DNA stand for the Navajo words Dinebeiina Nahiilna Be Agaditahe, which means law of the people.

2. Louise Gibson, Esq., letter to Flagstaff Chief of Police, May 19, 1975, MSRO files.

3. Ibid.

4. Ibid.

5. Elmo E. Maxwell, letter to Louise Gibson, June 4, 1975, MSRO files (hereafter cited as Maxwell letter.)

6. Ibid.

7. Ibid.

8. T.C. Hance, deputy city attorney, letter and complaint to MSRO, Jan. 1, 1976, MSRO files.

9. Maxwell letter.

10. Elmo E. Maxwell, interview in Flagstaff, Nov. 5, 1975.

11. Begay, et al. v. Flagstaff, Civ. No. 76-82-PCT (D. Ariz., filed February 1976).

12. See appendix A.

13. Begay v. Flagstaff, No. Civ. 76-82-PCT (D. Ariz.) complaint filed February 1976, pp. 7-8.

14. Begay v. Flagstaff, No. Civ. 76-82-PCT (D. Ariz.) answer filed May 14, 1976, p. 2.

15. Judge J. Thomas Brooks, superior court, interview in Flagstaff, July 15, 19755 (hereafter cited as Judge Brooks interview.)

16. Jensen v. Richards, et al., No. Civ. 76-499-WEC (D. Ariz.) complaint filed July 23, 1976, p. 4 (hereafter cited as Jensen complaint).

17. Ibid., pp. 4-5.

18. Ibid., pp. 5-6.

19. Arizona Daily Sun, "Suit filed over the arrest," July 28, 1976, and Jensen complaint.

20. Robert L. Miller, Esq., letter to William Levis, MSRO, Aug. 20, 1975, MSRO files.

21. See appendix A, p. A2.

22. Flagstaff Police Department, 1974 Annual Report, p. 3.

23. Ibid., p. 12.

24. Flagstaff Police Department, 1975 Annual Report, p. 14.

25. Ibid., p. 6.

26. Ariz. Rev. Stat. §§ 36-2021 to 2031.

27. Ariz. Atty. Gen. Op. No. 74-3 (R-6).

28. The report was dated Nov. 10, 1975.

29. Judge William C. Brady, Court Report for July 1975, submitted to the Flagstaff mayor and city council, Aug. 8, 1975 (hereafter cited as July Court Report).

30. Judge William C. Brady, Court Report for June 1975, submitted to the Flagstaff mayor and city council, July 11, 1975 (hereafter cited as June Court Report).

31. Judge Brooks interview.

32. Helen Gonzales, chief clerk for Judge Garcia, interview, July 15, 1975. Judge William C. Brady, interview, July 15, 1975.

33. Northern Chapter, Arizona Civil Liberties Union, Flagstaff Municipal Court Proceedings and Rights of Defendants (Nov. 10, 1975), p. 66 (hereafter cited as ACLU Report.)

34. North v. Russell, 96 S. Ct. 2709 (1976).

35. Judge Brooks interview.

36. Ron Lee, interview in Flagstaff, July 15, 1975.

37. Frederick Aspey, interview in Flagstaff, July 14, 1975.

38. ACLU report, p. 3.

39. Ibid.

40. The initial appearance requires the judge to inform defendants of their constitutional rights, to determine whether they qualified for free counsel, and to set bail if necessary. The arraignment is the point at which defendants are asked to plead guilty or not guilty.

41. William C. Wade, NACOG executive director, letter to MSRO, Sept. 27, 1976.

42. Appendix A, p. A9.

43. John Kammer, Bryan Short, and Tom Carr, interviews in Flagstaff, July 14, 1975, and ACLU report, p. 27.

44. Judge Brooks interview.

45. Frederick Aspey, interview in Flagstaff, July 14, 1975. (hereafter cited as Aspey interview.)

46. Ibid.

47. J. Michael Flournoy, interview in Flagstaff, July 15, 1975.

48. Judge William C. Brady, interview, July 15, 1975.

49. Aspey interview.

50. ACLU report, p. 33.

51. July Court Report.

52. June Court Report.

53. R.C.P. §7.

54. The Arizona Republic, Aug. 18, 1975, pp. B-1, B-2 (hereafter cited as Arizona Republic article).

55. Ibid.

56. Ray Otero, Jr., court probation officer, memo to Judge Brady, July 13, 1975.

57. Arizona Republic article.

58. William B. Hurst, deputy county attorney, letter to Maria Pares, MSRO, May 18, 1976, MSRO files.

59. C. Yazzie, secretary to Chief Dart, letter to Maria Pares, MSRO, Sept. 16, 1975, MSRO files.

60. Lt. W.R. Jenkins, Arizona Department of Safety, in a letter to MSRO staff wrote that the organization, which is loosely structured, meets informally about once a month. It encourages information exchange and a discussion of mutual problems and projects. Members include the county attorney, judges, city police officers, and Hopi and Navajo officers.

61. ACLU report, p. 22.

62. Arizona Republic article.

63. See notes to R.C.P. §18.1.

64. June and July Court Reports.

65. Ariz. Atty. Gen. Op. No. 59-149.

66. Ibid. and 18 U.S.C. §243.

67. State v. Delvecchio, Ariz. Sup. Ct. for Coconino County, Case No. 6788 (1975).

68. Ibid.

69. Ariz. Rev. Stat. §21-315.

70. State v. Delvecchio, above.

71. Jo Wycoff was appointed effective May 1, 1976.

72. General order in the matter of guidelines for excuse from jury service, Ariz. Sup. Ct. for Coconino County, Aug. 11, 1975.

73. Ibid.

74. Jo Wycoff, letter to Maria Pares, Mar. 17, 1976, MSRO files.

75. The right to a jury trial, to be released pending trial, and the right to counsel are waived when a defendant pleads guilty.

76. Appendix A, p. A3.

IV. THE LOCAL ALCOHOL RECEPTION CENTER (LARC) PROGRAM IN FLAGSTAFF

Under the law, the Arizona Department of Health Services (ADHS) has primary responsibilities for developing LARC programs. The department utilizes agencies of the regional council of governments (COG) to assist in the planning but not in funding the programs.[1] Although the Arizona State plan for 1975-76 recognized that "Indians experience alcoholism-related problems three times their proportion in the general population,"[2] Flagstaff has been unable to keep a LARC open continuously since the law became effective in January 1974. Flagstaff was to receive $77,000 from the State budget in fiscal year 1975-76 for a LARC.

A review of the history of its first 2 years reveals that Native Americans for Community Action (NACA), funded by the National Institute on Alcoholism and Alcohol Abuse, originally was given a contract to operate the LARC in Flagstaff. Ronald C. Wood, executive director of NACA, noted: "We operated the LARC from January 1974 through mid-October 1974. The primary reason NACA dropped the LARC contract was because we had no financial support from the city or the county." (p. 61.) Wood considered the lack of funding to be a major factor in preventing the establishment of a permanent LARC facility. "LARC funding in Arizona is on a 50-50 basis, with 50 percent coming from the State...and 50 percent cash or in-kind [matching funds] coming from the local community." (p. 61.)[3] He said that the LARC in Flagstaff closed on June 30, 1975, because the community would not assume the responsibility to keep it open.[4]

Tom Gonzales, a senior counselor at NACA, concurred:

> The State passed the law, without proper implementing of the LARC, and then asked the city and county to come through and fund 50 percent. Well, the city and county said, who's the State to tell us what to do?" (p. 62.)

Wood made an allegation about the treatment of inebriated persons to which some scme city officials have admitted. Wood contended, "There has been a misuse of laws, since public inebriates cannot be arrested for being drunk as

such. They're being arrested for disturb[ing] the peace, for loitering..." (p. 62.)

After the Advisory Committee held its informal hearing in November 1975, a LARC opened in Flagstaff. The Arizona Department of Health Services noted:

> When the Conconino County Board of Supervisors turned down a LARC services contract for Fiscal Year 1975-76, the Division of Behavioral Health Services published a Request for Proposals for LARC services in Flagstaff [in] August 1975. The only respondent to this [request] was the Northern Arizona Comprehensive Guidance Center (NACGC), which was awarded the contract. Services were to be provided to NACGC's affiliate in Flagstaff, the Coconino Community Center (CCC). A plan was submitted to the Division, approved, and technical assistance was offered by Divisicn staff. The result was the Flagstaff Comprehensive Program for Alcoholic Rehabilitation (PAR), a cooperative venture involving the CCC, City and County officials. The facility began operation about April 30, 1976 with a 13-bed capacity. It is open for formal intake and ongoing rehabilitation services five days a week, but it is open for emergency intakes and detoxification 24 hours a day, 7 days a week. Since its opening, the facility has been filled to capacity only once. The City of Flagstaff has pledged $20,000 to the PAR for renovation and expansion of the facility. These funds will be made available once the PAR has increased its staff through the imminent addition of 5 CETA positions.[5]

ADHS is also among the agencies concerned with the inadequacies of LARC facilities and has proposed to the State legislature that it repeal the existing emergency service legislation and reestablish a different type of emergency service legislation to provide quality care.[6] Unfortunately, the proposal does not address the problem of mandating the creation of LARCs or making funds available.[7]

In interpreting the legislation, the State attorney general wrote that police officers and others who have reasonable cause to believe that persons are publicly intoxicated and a detriment to themselves or others may

transport them to a LARC. It is the State legislative intent that intoxicated persons be taken to a LARC and any person who in good faith transports such persons to a LARC will not be criminally or civilly liable.[8] The attorney general concluded that the greatest danger for moral and financial liability exists, "in the potential failure to transport the intoxicated persons to the [LARCs] and/or the preferring of unjustified criminal charges for custody and detention."[9] [emphasis added.]

Court officials and the police department in Flagstaff, a city which has had a LARC off-and-on since 1974, still face problems related to public intoxication and arrests. The most critical is the effectiveness of the LARC law when a LARC facility is not available for public inebriates. According to Judge Brady, in Flagstaff public inebriates are literally out in the cold. At the Committee's open meeting he stressed, "What in the name of humanity are we going to do with these drunks who are passed out in the alleys, in the streets, in the doorways...with winter coming on...?" (pp. 141-42.) Although he admitted bad arrests are made, he queried:

> ...would they rather have these people taken from the cold out of the streets...and brought to safety and warmth, where they have a place to sleep and a meal in the morning and then are released? Or would they, because of the technicality of this law, would they have them left there? (p. 166.)

Also concerned about the effect of the present LARC law, Coconino County attorney J. Michael Flournoy commented, "The legislature sat down and formed the statutes for LARC centers but there was no way to fund them. And so they [LARC laws] have been a complete disaster." (p. 206.) Agreeing with Judge Brady, Flournoy felt that the police have nc choice but to arrest people when there are no LARC facilities. Condoning the present practice, he commented:

> I think that law enforcement authorities are trying to do the best job they can under the circumstances...when that one statute [public drunkeness] was removed...in a given case there might be five or six different misdemeanor charges [for which] ycu can arrest some individual. (p. 204.)

Because of the problems inherent in the original LARC law, the Arizona legislature amended the statute in 1976 to allow police officers to place public inebriates in a detention facility (jail) without arrest for up to 12 hours if a LARC is not available.[10] According to the mayor, city manager, and city attorney, the amendment is known as the "Flagstaff Amendment" because the mayor of Flagstaff was influential in its passage.[11]

Members of the northern chapter of ACLU are aware of problems relating to LARC laws and public inebriates. The ACLU first became concerned about the criminal justice system in Flagstaff during the 4th of July 1974 weekend. Every July 4th, Flagstaff has an Indian Pow Wow. During this weekend holiday many American Indians are charged with criminal offenses and must appear in Flagstaff municipal court. The ACLU's observations revealed irregularities in court proceedings that it believed warranted further investigation.

Members of the ACLU were critical of Flagstaff's response to the imposition of the LARC law. Speaking for the group, Short, said, "[I]n terms of arrest, problems [regarding the arrest's legality] occurred in respect to two charges, the first was the loitering vagrancy charge...." He also stated, "[c]ases did come up in which the loitering charge was clearly in contradiction to the LARC law used to arrest people whose situation was being publicly intoxicated." (p. 97, 98.)

Robert Gaylord, emphasized:

> [T]the purpose [of the law] was to provide facilities where inebriates could be placed without incarceration. Because of the quarrels with the various government authorities, the funding has never been provided, at least established funding, in Flagstaff. It's been on and off. (p. 99.)

The lack of funding has resulted in the arrests of public inebriates as described earlier by Judge Brady, Flournoy, and Short. Although the ACLU understands the predicament this situation creates for the police, Gaylord contended that even where arrests were made with well-meaning intentions, the police officers' behavior is unconstitutional. (p. 99.)

Short said that the ACLU was not alone in its feeling about the legality of alcohol-related arrests. "One of the judges...was reported to have said to our investigator [Kammer]...[that] the police are working the hell out of this DTP [disturbing the peace] charge." (p. 99.) ACLU was most concerned about these arrests because in the majority of cases the police officer was the complainant; a third party had not complained about the defendant's behavior. (p. 99.)

Notes to Chapter IV

1. The Northern Arizona Council of Governments (NACOG) is composed of representatives from Apache, Coconino, Navajo, and Yavapai Counties.

2. Arizona State Department of Health Services, The Arizona State Plan for the Prevention, Treatment, and Control of Alcohol Abuse and Alcoholism 1975-76 (hereafter cited as The Arizona State Plan). See also Suzanne Dandoy, M.D., director, Arizona Department of Health Services (ADHS), letter to William Levis, Oct. 20, 1976, MSRO files, (hereafter cited as ADHS response).

3. Ibid. For political subdivisions in the State, the annual appropriation report authorized the reduction of required matching funds to 25 percent.

4. Ronald C. Wood, interview in Flagstaff, July 14, 1975.

5. ADHS response, p. 2.

6. The Arizona State Plan.

7. Reason given for their omission is because of the department's sensitivity to problems faced by city and county officials since the State's mandating services without providing adequate support for them. ADHS response, p. 2.

8. Ariz. Atty. Gen. Op. No. 74-3 (R-6) and Ariz. Rev. Stat. §§ 36-2021 to 2031.

9. Ibid.

10. Ariz. Rev. Stat. §36-2026.

11. Appendix A, p. A3.

V. OPPORTUNITIES FOR CHANGE

The investigation of the Arizona Advisory Committee revealed that, within Flagstaff, opportunities for change are present. NACA, adequately funded and supported, contains the promise of increased cooperative efforts with the municipal, justice, and superior courts. Judge Brady exhibited his confidence in NACA when he said, "If we have an alcohol-related offense [and] the court feels that this person needs some guidance and counseling...we refer them to NACA." (p. 162.) Whereas NACA's mission is closely related to assisting individuals having alcohol-related difficulties, Perry Allen wondered why Flagstaff had no Indian center or Indian commission.[1] (pp. 348, 357.)

On a larger scale when problems affect the community as a whole, Flagstaff has used Federal funds in an attempt to resolve difficulties. For example, as a result of the Federal Omnibus Crime Control and Safe Street Act of 1968,[2] Arizona created a State justice planning agency to administer funds provided to local governments by the Federal Law Enforcement Assistance Administration (LEAA). In an attempt to systematize the distribution and planning of these programs, Arizona was divided into six planning districts governed by a local council of governments. Flagstaff and Coconino County, along with Apache, Navajo, and Yavapai Counties, comprise the Northern Arizona Council of Governments (NACOG).[3] (p. 370.) Membership in NACOG consists of local elected officials such as county attorneys and county commissioners.

It was alleged during the hearing that NACOG has not been receptive to justice problems affecting American Indians. Judge Brady testified that the council of governments approved a grant on the proper way to file papers in lieu of answering his request for an interpreter. (pp. 156-57.) According to Martha Blue, an attorney in Flagstaff, the local justice planning group "[O]bviously felt that improvement of justice meant buying only more patrol cars and police equipment."[4] But William Wade, NACOG executive director, disagreed. "At no time," he noted, "has Judge Brady, or the City of Flagstaff, ever submitted a proposal...for an interpreter/baliff, or similar project."[5]

Evans Nuvamsa, Indian justice specialist for the Arizona Justice Planning Agency, summarized the problem in getting community support for Indian programs:

> LEAA funds [are available] to Indian tribes, universities...and criminal justice systems. [All of these border towns] are using [their American Indian] population as part of the appropriations in receiving...LEAA [dollars] each year, but I have yet to see any program developed...just for the purpose of promoting programs to address Indian problems [in the border towns]. (p. 363.)

Nuvamsa then pleaded for applications. "We are aware of those problems, the need for special interpreters within the various...court systems, but we have yet to receive any applications...for financial assistance." (p. 365.)

Bryan Short reiterated the charge that neither the city council nor the mayor is responsive to the criminal justice system as it affects Indians. He emphasized that the city has not applied for available LEAA funds even though Judge Brady submitted an application for a Navajo interpreter. (pp. 110 and 373.) Even if the request had been approved by the city council and signed by the mayor, it would have to be submitted to NACOG for funding. The council of governments would then review and approve it if the proposal was among its own priorities.

There have been complaints that the council's priorities do not reflect the Indian community. In rebuttal, Wade wrote, "NACOG has voluntarily placed an American Indian representative on the justice planning board specifically to address such problems and provide added insight in this area."[6] Wade noted that NACOG has helped the Native Americans for Community Action "with several programs that indirectly relate to alleviating criminal justice problems with Native Americans."[7] In the end, however, the final decision to approve a proposal rests with NACOG and the State justice planning agency unless an individual wants to file a complaint to challenge the process.[8] (p. 371.)

Witnesses proposed another solution which would not only have a significant economic impact on Flagstaff but also could save lives and lighten the intensity of problems faced by the police and the courts. Their suggestion was the legalization of liquor on the Navajo and Hopi

Reservations. Those persons who chose to testify on the subject at the informal hearing stressed that it would have a salient effect on the criminal justice problems facing Flagstaff.

Perry Allen said that he has maintained for a long time that liquor should be legalized under the complete control of the Navajo Nation. He estimated that crimes relating to alcohol would decrease 90 percent in border towns if liquor were legalized on the reservation.[9] (p. 352.) Frederick Aspey agreed that the legalization of alcohol would lessen the criminal justice problems in Flagstaff. (p. 295.)

Police officers saw safety benefits in the legalization of liquor on the reservation. "A large percentage of our accidents, our fatal accidents," observed Lt. Jenkins, "are caused by DWI drivers. [T]he large percentage of these are in transit from the reservation to the border towns....I think the Indian reservation residents should not be treated as immature wards...." (p. 267.) Chief Dart felt the legalization of alcohol could reduce the fatal accidents on the reservation by 75 percent. (p. 234.) Dart, who has a master's degree in social science, agreed with Allen's statement about legalization and sale of alcohol being established under tribal control. "From a social scientist's standpoint," he emphasized, "the fact that liquor is not available on the reservation...creates a phenomenon called reinforced alcoholism, where persons drink liquor off the reservation and do it abundantly because they know they can't do it on the reservation." (p. 235.)

City and county officials also were in agreement. "My feeling is if you're going to have legalization of liquor," said county attorney Flournoy, "you ought to have legalization of liquor in every State, in every area, and everyone should have that right...." (p. 195.)

Because of the number of Indians arrested for alcohol-related offenses, city attorney Croxen conjectured that, "[P]erhaps the alcohol problem...could be alleviated to some extent where peripheral cities are concerned, if alcohol were legalized perhaps [gradually] on the reservation." (p. 77.) Ronald Wood also saw legalization as the only solution.

> It is my own personal opinion that prohibition of alcohol on the reservation has not stopped alcohol

usage on the reservation. I think that the Indian tribe is going to have to recognize this as a problem, and I think legalization is an inevitable eventuality. (p. 71.)

Notes to Chapter V

1. NACA was awarded a grant to establish an Indian center by the Office of Native American Programs (ONAP), U.S. Department of Health, Education, and Welfare (HEW), in May 1976. The grant monies will provide for educational, employment, and other social services.

2. 5 U.S.C. §501.

3. Arizona State Justice Planning Agency, Progress Report for 1974, March 1975.

4. Ward, Hufford, Blue and Withers, Attorneys at Law, statement prepared for the Arizona Advisory Committee, Nov. 18, 1975.

5. William C. Wade, NACOG executive director, letter to William Levis, Sept. 27, 1976, MSRO files.

6. Ibid.

7. Ibid.

8. Ibid.; Ernesto G. Munoz, executive director, Arizona State Justice Planning Agency, letter to William Levis, Sept. 22, 1976, MSRO files; and M. Thomas Clark, LEAA Regional Administrator, letter to William Levis, Oct. 13, 1976, MSRO files.

9. Perry Allen, interview in Window Rock, Sept. 16, 1975.

VI. FINDINGS AND RECOMMENDATIONS

The Arizona Advisory Committee to the U.S. Commission on Civil Rights found that the administration of criminal justice in Flagstaff is not always equal for all persons regardless of race. Although part of the problem derives from cultural conflict, the Advisory Committee found deficiencies which could be rectified with a minimum of effort by the State of Arizona, the City of Flagstaff, and the Hopi and Navajo Nations.

Finding 1

The Arizona Advisory Committee found the 1972 State law repealing the offense of public intoxication to be inadequate. Unnecessary arrests continue of persons who are simply intoxicated by officers charging them with disorderly conduct and disturbing the peace.

Recommendation 1

The Arizona Legislature should amend the public intoxication law to make it clearly illegal to arrest a person who is simply intoxicated and charge that person with disorderly conduct. The amendment also should provide for specific criminal and civil penalties for police officers who violate the law.

Finding 2

The Advisory Committee also found that the Arizona law does not provide the mechanism or resources necessary to ensure that local communities will operate fulltime Local Alcohol Reception Centers (LARC). The legislation mandated that the State contribute 50 percent of the money to operate a LARC which the municipality must match by 50 percent in support funds or in services. The Committee found, however, that Flagstaff was unable to provide the necessary funds on a sustained basis.

Recommendation 2

The Arizona Legislature should amend the 1972 LARC law to ensure that municipalities provide the necessary matching funds to operate LARCs where needed. The Advisory Committee

also recommends that the Flagstaff City Council apply for funds to operate the LARC through the Northern Arizona Council of Governments (NACOG), the Arizona Department of Health Services, and the National Institute on, Alcoholism and Alcohol Abuse of the U.S. Department of Health, Education, and Welfare.

Finding 3

The Advisory Committee found that according to the State attorney general the Arizona Department of Health Services has the primary responsibility for the implementation of the LARC law. The ADHS has neither administered nor monitored the operation of LARCs as required by the law. The department has been derelict in not ensuring that communities adhere tc the provisions and spirit of the 1972 law.

Recommendation 3

The Arizona Department of Health Services should formulate stronger regulations to ensure that communities operate LARCs in compliance with the Arizona law. The department should lobby the State legislature to advocate the mandatory establishment of LARCs throughout local communities in the State.

Finding 4

The Advisory Committee found that approximately 90 percent of all American Indians arrested in Flagstaff are apprehended for alcohol-related offenses. In addition, persons testified that the numbers of American Indians arrested in Flagstaff and in other border towns would be reduced if alcohol were legalized on the reservations. The Committee heard that the legalization of alcohol on the reservations also would most likely reduce the number of automobile accidents, automobile-related offenses, and possibly automobile-related fatalities on and off the reservation.

Recommendation 4

Because the alcohol problem is a complex social issue, the people of the Navajo and Hopi Nations should consider the ramifications of legalizing the selling and drinking of alcohol on their land, and the problems that the present

situation creates. If the people vote the legalize alcohol, its sale should be regulated by the tribal councils and alcohol should be sold by tribally controlled establishments.

Finding 5

The Arizona Advisory Committee found that the arrest procedure used by the Flagstaff police for detaining reservation Indians charged with traffic offenses is illegal. Although Judge Brady ordered this procedure halted, the Advisory Committee determined that this practice apparently continues.

Recommendation 5

The superior court, the Flagstaff magistrate court, and the city attorney should again order the chief of the Flagstaff police to cease requiring reservation Indians to post cash bond in traffic cases, since the practice is in violation of the United States Constitution's equal protection clause.

Finding 6

The Advisory Committee found that on at least one occasion the Flagstaff police arrested an American Indian for a felony he had not committed solely because he was an Indian. The Committee also found that the suspect was detained without proper clothing for 10 hours and was forced to sign a waiver of liability before he was released from jail.

Recommendation 6

The Flagstaff city attorney should instruct the police chief that the department must not arrest a person solely because of his or her race. The police chief also should relay the same message to his officers and indicate that the practice is in violation of Federal and State law.

The Flagstaff city council should investigate the charges made by the defendant in this particular case and establish a city human relations commission empowered to investigate all such complaints in the future. The Commission should be composed of representatives of the American Indian community, city council, and other

interested community groups, but should be separate from the police department and should report directly to the council.

The city council should reprimand the Flagstaff police chief for allowing its officers to coerce the suspect into signing the waiver of liability. The council should order the police department tc make restitution for the false arrest and improper treatment of the suspect.

Finding 7

The Advisory Committee found that, unlike Phoenix and Tucson, none of the city or the justice magistrates in Flagstaff is an attorney. The associate city magistrate has had no judicial training while the chief city and justice magistrates have enrolled in some judicial courses.

Recommendation 7

The Arizona Supreme Court should revise the Rules of Criminal Procedure and the legislature should rewrite the State statutes to mandate that the chief magistrate in city courts be a licensed attorney unless it can be shown that none is available. In addition, as in Phoenix and Tucson, a magistrate who is an attorney should preside over all trials where the defendant faces possible incarceration if found guilty. Until this recommendation is implemented, magistrates must attend training on a yearly basis as approved by the State supreme court.

Finding 8

The Advisory Committee determined that the en masse reading of a defendant's legal rights may be the most critical time for the 90 percent of Indian defendants who plead guilty in city court. Except on rare occasions, the rights are read only in English even though the defendants may have a limited understanding of the language. The Committee found that fellow defendants or inmates usually provide whatever interpretation is available. Although the magistrates have made some efforts to rectify this problem by requesting interpreters through the city council, their requests were rejected.

Recommendation 8

The magistrates should resubmit their proposals to the city council for full-time interpreters and paralegals for monolingual Indian defendants. The Flagstaff City Council should approve the funding for interpreters and paralegals and ask for assistance, if necessary, from the Northern Arizona Council of Governments. NACOG should promote and approve funding of such a program. If additional funding is needed, the City of Flagstaff should submit a proposal with the co-endorsement of Native Americans for Community Action and the Navajo and Hopi Nations to the Arizona Justice Planning Agency for these positions.

In addition to the above recommendation, each defendant should be given a written copy of the rights which are read to them to ensure that all persons understand their legal rights. The chief magistrate should see that the legal rights are transcribed on tape into Navajo and Hopi languages and given to tribal members who have a limited knowledge of English. The judge should seek the assistance of NACA and DNA-People's Legal Services to accomplish this task.

Finding 9

The Advisory Committee found that Arizona only requires the establishment of public defender offices in Maricopa and Pima Counties. Coconino County must contract with a private law firm which does all of its public defender work. In city court, the chief magistrate has only enough money to hire attorneys for a total working time of 50 hours per year. The present systems discourage the use of public defenders in Coconino County.

Recommendation 9

The Arizona Legislature should revise the public defender statute to provide for the establishment of a statewide system. Arizona should establish a State public defender in Phoenix with branch offices in various regions of the State. One such office should be located in Flagstaff to handle all public defender work for Coconino County. Public defenders would represent defendants in superior, justice, and city court and should be funded on an equal basis with county attorneys. Such a system should eliminate some money and staffing problems that plague the

present ad hoc system. In addition, it would provide outlying counties with the same quality of legal representation that is provided by law in Maricopa and Pima Counties.

Finding 10

The Advisory Committee found that at least one city magistrate has set excessive bail, apparently to encourage American Indians to forfeit the right to trial and to plead guilty to offenses they might not have committed. The Committee also found that reservation Indians are seldom released on their own recognizance due to the belief that they might have to be extradited off the reservation. The Advisory Committee found that city and county officials complain about the inefficiency of the extradition procedure without having first-hand knowledge of its operation. Only one extradition request was forwarded to the Navajo Nation from Coconino County in the first 9 months of 1975 and it was handled expeditiously.

Recommendation 10

The superior court for Coconino County should direct the city and justice courts that pursuant to the Arizona Rules of Criminal Procedure all defendants are to be released on their own recognizance unless the particular circumstances dictate otherwise. In those cases where more than 50 percent of evidence shows that bail is required, the least onerous conditions and amount should be placed on the release of the defendant in accordance with the State rules. The superior court and the city and county attorneys should monitor the compliance of the city and justice courts with the above recommendation.

All reservation Indians should be released on their own recognizance unless it can be shown by objective criteria applicable to all defendants regardless of race that bail is necessary. To do otherwise invalidates the equal protection clause of the United States Constitution.

Coconino County, and Navajo and Hopi officials, should again review extradition procedures so that Indian defendants will not bear the burden of official misunderstandings. The Northern Arizona Peace Officers Association should assist the officials in solving the bail and extradition problems.

Finding 11

The Advisory Committee found that American Indians had been excluded from a superior court jury in the summer of 1975. The presiding judge of that court has since revised the rules that the clerk of the court must use for choosing potential jurors.

Recommendation 11

The superior court's presiding judge should monitor the success or failure of his rules to eliminate the possible discriminatory exclusion of American Indians from superior court juries. If the rules do continue to exclude Indians, they should be revised. In addition, the clerk of the court should accept the offer of the chief of the Navajo police to assist her in advising reservation residents when they are potential jurors.

Navajo police stations should be used as clerk substations with the approval of the Navajo Nation to notify potential jurors. The State Legislature should amend Ariz. Rev. Stat. §21-301 to allow potential jurors to be selected from persons who have driver's licenses, registered motor vehicles, or appear on census lists compiled by the Bureau of Indian Affairs (BIA) and the United States Bureau of the Census.

Finding 12

The Advisory Committee found that city court defendants are not always read individually the legal rights they are forfeiting by pleading guilty. In addition, the defendants are not provided enough time to read the guilty form before signing it. As with other information, the form is provided only in the English language.

Recommendation 12

Pursuant to the Rules of Criminal Procedure, the city magistrates should inform each defendant individually of the rights they are waiving by pleading guilty. Each defendant should be given a chance to sit down and read or listen to the guilty plea form in English, Navajo, Hopi, or another Indian language before signing it. They also should be allowed to ask questions about the consequences of pleading guilty. The city court should seek assistance of NACA, DNA,

and the Hopi and Navajo Nations to translate this form into their languages.

Finding 13

The Advisory Committee found that there is a great need for a center to assist American Indians with both legal and nonlegal problems in Flagstaff. Although NACA recently was funded to establish such a center, continued support is necessary to ensure its success.

Recommendation 13

The Flagstaff City Council in conjunction with the Northern Arizona Council of Governments should provide the financial support for the long-term existence of an Indian center in Flagstaff to address both legal and nonlegal problems. One purpose of the center should be to educate American Indians in their legal rights before and after arrest.

POSTSCRIPT

On November 20-21, 1975, the Arizona Advisory Committee conducted informal hearings in Tucson on treatment received by American Indians during the criminal justice process in border towns of the southern part of the State. The testimony included treatment of American Indians during arrests, arraignments, and trials and problems related to legal representation, sentencing, and jury representation.

Based on the testimony and prior field investigations by Commission staff, the Arizona Advisory Committee found that Indians in the southern portion of the State experience problems with the criminal justice system similar to those encountered in Flagstaff. Because of the seriousness of the problems articulated by defendants and complainants, the Advisory Committee feels that an extensive and intensive investigation of the criminal justice system's treatment of Indians is warranted. The Arizona Advisory Committee and Commission staff recommend that such an investigation be conducted by the U.S. Commission on Civil Rights in the near future.

APPENDIX - A

JUSTICE IN FLAGSTAFF: A CONFLICT OF CULTURES

CITY OF FLAGSTAFF, ARIZONA

COMMENT OF THE CITY OF FLAGSTAFF ON THE DRAFT OF, "JUSTICE IN FLAGSTAFF: A CONFLICT OF CULTURES" A REPORT OF THE ARIZONA ADVISORY COMMITTEE ON CIVIL RIGHTS TO THE UNITED STATES COMMISSION ON CIVIL RIGHTS.

The City of Flagstaff wishes to express its thanks to the Commission for this opportunity to review and comment on the draft manuscript of, Justice in Flagstaff: A Conflict of Cultures, and perhaps add to the substance of the work with a report of activities and progress that reflect official and staff concern in the problem areas treated to in the report. Although comments were invited from more than one member of the City Administration, it was decided to consolidate the response in this one comment.

The Report for the most part treats to two broad areas: 1. The challenge to the arrest and bonding procedures; and 2. The quality of the Court system and personnel.

Though current practice differs in bond requirements in minor misdemeanors from the practice to two years ago, a valid argument can be made for requirements of bonding when a violator resides beyond the jurisdiction of the enforcing agency. The procedures of rendition or extratition are not available generally in misdemeanor offenses.

Concerning the quality of court and court personnel these concerns are on-going and have received attention of the funding authority for many years. Recent observations, such as the ACLU report, the Arizona Advisory Committee hearing, to be sure, have stimulated even greater interest and actions.

Part of the report concerns itself with several instances in which arrest procedures are questioned not only on the facts but also on constitutional grounds. At least four of these incidents are the subject of current litigation in the United States District Court and will find ultimate resolution there. The City, of course, takes issue with the allegations in those cases and indeed a review of the facts and circumstances surrounding each incident reveals there was ample probable cause for the arrests and that the procedures were founded in statutory mandates of authority as interpreted at the time.

Little would be gained in this response to treat to each and every allegation and statement of facts on an adversary level. Viewed from the City's point of view the general tenor of the report is highly subjective and it is hoped readers will attempt to cast an objective light on their reading.

By way of illustration the report states, "every defendant who faces the possibility of incarceration has the right to a jury trial". The reader's attention is invited to Goldman vs. Kautz 111 Ariz. 431, 531, P. 2d 1138 (1975) wherein the opinion of the Arizona Supreme Court differs from that statement.

Suffice it to point out and urge that caution should be exercised in using the report as an instruction handbook without a thorough review of the substantive and procedural conclusions contained therein.

The true value of the report, it is felt, lies in the philosophical and sociological observations on procedures and practices that have the net effect of burdening one sector of our social structure, the Native American. Officials and staff of the City of Flagstaff have not reacted negatively to the public spotlight as a review of actions taken in the past two years will reveal.

The Mayor, supported unanimously by the affirmative votes of the Council, has: added a second full time associate magistrate; funded a position in the court administration that assures the service of an interpreter in the major Indian language of the area; remodeled the court facilities to lower noise levels and assure proper lighting and enhanced administrative efficiency; increased the appropriation for indigent defense; funded a court procedures study.

Further, to the alcohol problem that lies at the base of much of the behavioral problems of Indians, the Mayor, marshalled sufficient attention and support, including the influence of the Attorney General of Arizona, to secure enactment in the Arizona Legislature of the protective custody feature in the LARC (Local Alcohol Recovery Center) provisions. The Amendment is known statewide as the Flagstaff Amendment.

The Mayor, a one time law enforcement officer, urges equal treatment for all citizens in both treatment under the law and in services of government. Each contact between the police and citizen should be a positive educational experience, he observes.

The Commission can be assured of the continued interest and actions of the City of Flagstaff toward securing equal treatment before the law for all sectors of the population.

DATED THIS 30th DAY OF SEPTEMBER, 1976.

Robert L. Dooley
MAYOR

L. C. McPherson, Asst.
CITY MANAGER

Fred W. Crockett III
CITY ATTORNEY

APPENDIX B

REPORT ON OBSERVATIONS

MADE BY THE NORTHERN CHAPTER, ACLU

AT THE 1976 FLAGSTAFF POW WOW

I. FLAGSTAFF MUNICIPAL COURT

The general impression of observers was that the procedures of the court were significantly improved. Both judges (Brady and Brown) made serious efforts to inform defendants of their rights. They were reasonable in attempting to fit penalties to meet individual cases and circumstances. Defendants living both on and off the reservation were given time to pay fines. Judge Brady displayed a high degree of flexibility, attempting to take into account the particulars of the arrest, the charges, and the circumstances of the accused, and in cases where police reports were inadequate to justify arrest, he was willing to dismiss charges. Judge Brown appeared several times to refuse release O.R. when it should have been granted, and was generally less scrupulous in dismissing questionable charges.

The ACLU feels that improvements need to be made in the following areas:

A. The enforcement of the law prohibiting public drinking from an open container is clearly discriminatory. An overwhelming majority of those who were arrested and jailed for this offense were Indians. No attempt was made to enforce the law against Anglos who, for example, violated the statute at the parade openly and in full view of police officers. This selective enforcement of the law--resulting in the incarceration of numerous Native Americans--is intolerable. It is a serious blot on a relatively clean Pow Wow record.

B. Both judges (Brown more frequently) seemed to impose one day retroactive sentences as a means of justifying arrests that had been made. Their prevailing attitude seems to be that one day retroactive is not a significant

punishment and consequently can be applied in questionable circumstances. Unless city judges in the future make an even greater effort to scrutinize charges, Flagstaff will be failing to exercise its single most important protection against the dangers of improper and improperly documented arrests (see II B & C below).

C. Translators were available in the persons of the bailiff and a Navajo Sheriff's Deputy. Their other duties during the weekend should be arranged so that they are physically present at all times during arraignments and initial appearances and close enough that defendants can consult them freely and without delay. Furthermore, it would be preferable for translators to be neutral and to be sworn so that they would be duly impressed with the serious nature of their task.

II. POLICE AND SHERIFF'S DEPARTMENTS

Observers were favorably impressed with the degree of professionalism displayed by Deputy Steven McCoy and other members of the Sheriff's Department observed carrying on the booking process at the County Jail and, less frequently, during activities elsewhere. Many members of the Flagstaff Police Department also showed commendable professionalism; however, the behavior of some members of the department, under specific circumstances outlined below, lead the ACLU to conclude that better training and supervision are called for in this department.

A. EXCESSIVE FORCE: It is the impression of the observers that significant efforts, often under difficult conditions, were being made to avoid the so-called "brutality" of which police are often accused. However, a notable exception was observed in the booking of Harold Michael Adams on the evening of July 2. Several times during the procedure, Flagstaff police officers surrounded the suspect shoving and pushing him and shouting at him in highly excitable, provocative voices. After the third such incident, Adams pointed

his finger toward one officer and asked to be left alone. For no reason, he was then knocked to the floor and physically abused for a length of time far beyond what would have been necessary to subdue even a violent prisoner. During the event ACLU observers overheard another law enforcement official voice harsh criticism of the officers handling Adams, saying, "this has got to stop."

In addition, on July 3, at 1:00 a. m., a number of patrons were removed from Club 66 by the Flagstaff police. Observers noted a wide variation in the behavior of the officers. Some wore heavy gloves, shoved and pushed their suspects frequently, and shouted a great deal. Others moved quietly and quickly to load suspects into the waiting police van and cars. Clearly the rough and aggressive behavior of the first group was unnecessary.

If some members of the Flagstaff Police Department are permitted to give the appearance of enjoying the application of arbitrary force on minority suspects, then it becomes dangerous for any law officer to enter a minority crowd. Observers witnessed at 1:20 a. m. July 4, after a police action outside of Club 66, a crowd of Native Americans expressing a high degree of hostility to a departing Flagstaff police car.

In conclusion, we feel that the community would benefit greatly, and potentially harmful incidents would be significantly reduced, if each member of the city police were encouraged to cultivate a dignified and professional demeanor rather than acting tough, hostile, aggressive, or superior. In this respect, the Flagstaff Police Department falls distinctly short of standards achieved by the Coconino County Sheriff's Department.

B. ARBITRARY ARRESTS: On the evening of July 2, observers in the parking lot of DJ's saw two Indian males in a large group singled out, grabbed, and taken into custody without questioning, for no apparent reason. This sort

of action can breed the hostility mentioned above. Elsewhere, observers noted that a number of Indian males were arrested for drinking from an open container, but no whites were, although a large number of whites were observed to be drinking openly on the streets. On the evening of July 2, two Flagstaff police officers brought into the jail two Indian males and charged them with illegal consumption (drinking under age). After their possessions had been removed from them, a member of the Sheriff's Department cataloguing their billfolds discovered proof that both were, after all, adults. The arresting officers had not taken the trouble to determine this fact.

C. REPORTS AND RECORDS: Although most officers were careful, some reported inaccurate times of arrest, and one was observed to react scornfully when his mistake was pointed out by another officer. Because of such carelessness in the courtroom the records of a number of cases were in such disorder that Judge Brady had to dismiss the charges. Problems included vagueness, obvious errors in time and place, and lack of clear substantiation for charges. It should be noted that record keeping so sloppy that it undermines the validity of arrests not only greatly increases the possibility of civil liberties violations but also increases the chance of legal action being brought against the city.

III. LARC

Without qualification, the LARC staff did an outstanding job, especially given the limitations imposed by minimal funding and makeshift facilities. To be commended are Carolyn Davis, Joe Williams, Marilynne McKell, Wolfgang Keutner and other staff and volunteers whose dedication was observed but whose names were missed. Similar programs should be given increased support in the future.

* U. S. GOVERNMENT PRINTING OFFICE : 1977 734-333/208